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CLEAN AIR ACT AMENDMENTS OF 1983

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BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 768

A BILL TO AMEND THE CLEAN AIR ACT

FEBRUARY 24, 1984

PART 2

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CLEAN AIR ACT AMENDMENTS OF 1983

FRIDAY, FEBRUARY 24, 1984

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met at 10 a.m., in room SD–406, Dirksen Senate Office Building, Senator Robert T. Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Chafee, Randolph, Mitchell, and Baucus.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Good morning. The Committee on Environment and Public Works will please come to order.

I am delighted that Senator Baucus is here. I understand Senator Mitchell is in the conference room and, therefore, technically is here. Senator Randolph, who is being honored at a breakfast at which Senator Alan Simpson is in attendance, will be up here as soon as that is concluded.

This is the seventh and the last day of hearings on S. 768, the Clean Air Act Amendments of 1983. In addition to hearings specifically on the provisions of the bill, the committee has also held 3 days of hearings on acid rain issues in general. Today, we will hear from those charged with implementing requirements of the Clean Air Act at the Federal, State, and local levels. We have asked the witnesses to comment on provisions of S. 768 from the perspective of those who must make the act work.

I would like to note that this is not the first time the committee has solicited assistance from organizations here today. We had 30 days of hearings in the last Congress and worked closely with State and local officials as we developed the predecessor to S. 768. The 97th Congress adjourned without acting on the bill voted out of this committee by a 15-to-1 vote. I, together with nine committee cosponsors, reintroduced the committee reported bill from the last Congress early in the 98th Congress. It is that bill that we are examining today as the committee's working paper.

The committee has scheduled 3 days—March 7, 13, and 14—to mark up the Clean Air Act Amendments of 1984. It is the chairman's intent to report the bill to the Senate before the end of March. I hope that statements and comments of our witnesses today will help us refine S. 768 to make it more effective.

Having said that, Senator Baucus, do you have any opening statement?

Senator BAUCUS. I have no statement. Thank you.

Senator STAFFORD. The Chair will, at this point, reserve the right of any other Senators who are able to attend, and especially those whose names I mentioned earlier, to have their opening statements in the record immediately following my own.

Here is Senator Mitchell.

Senator MITCHELL. I guess I timed my entrance just right.

Senator STAFFORD. It was a dramatic last-minute appearance you would expect from somebody from Maine.

Senator MITCHELL. I just want to commend you, Mr. Chairman, for commencing what we hope is the beginning of the last stages of the reauthorization of the Clean Air Act, including some important provisions in which we share an interest. It has been and continues to be a long road, but we hope that we are nearing the end of it. I hope very much that the testimony we will hear today will contribute to that end.

Senator STAFFORD. Thank you, sir.

It would now be the committee's intent to turn to the people who are here to help us today. We would invite Mr. Joseph A. Cannon, Assistant Administrator for Air and Radiation, of the Environmental Protection Agency to come to the witness table.

Without objection, the Chair would place the full statements of all the witnesses this morning in the record and invite the witnesses to summarize them in front of the committee. In your case, Mr. Cannon, we will leave the option of reading the statement or summarizing it up to you. We appreciate your being here.

STATEMENT OF JOSEPH A. CANNON, ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. CANNON. Mr. Chairman and members of the committee, my name is Joseph Cannon. I am the Assistant Administrator for Air and Radiation at the U.S. Environmental Protection Agency, and I am delighted to have the opportunity to testify today on reauthorization of the Clean Air Act.

The Clean Air Act is an important and valuable piece of legislation. But, like any complex statute, it needs to be refined in light of changed circumstances and experience gained in its implementation. Only in that way can it be made an even better environmental protection statute, one geared toward meeting the problems of the 1980's and the 1990's. Congress has amended the Clean Air Act in the past to reflect changing circumstances, and S. 768 represents your latest effort to improve it.

I would like both to comment on some aspects of S. 768 and to discuss with you some additional areas that we think will make the act more appropriate to the air pollution problems that confront us today.

The situation we face now is very different from when the first major amendments were enacted in 1970 and even in 1977. Then we were concerned about cleaning up dirty areas nationwide. Now, although we are worried about certain intractable nonattainment areas,

most of the country is in attainment or making real progress toward it.

In the 1970's, States needed help in formulating and carrying out their programs. Now there are many very competent and increasingly knowledgeable State and local agencies with programs that have become institutionalized.

In the 1970's, we thought we could identify one safe level for hazardous and criteria pollutants. Now we know that the situation is far more complicated than that for the pollutants we have addressed and those we have yet to address. I believe that as we move into the middle of the 1980's, the Clean Air Act should reflect these changes and operate more flexibly and appropriately to the real problems we face currently.

Therefore, my comments on your bill will reflect two basic themes that unify our current thinking. The first is decoupling risk assessment from risk management, a topic Administrator Ruckelshaus has discussed before and one to which I will return shortly. A second theme is that, given the increased experience of the States, we should rely more on their knowledge and judgment.

We recognize that there are a number of possible approaches to the concerns that I will discuss today, and we are not wedded to the details of any particular approach. We look forward to working with you and your staff to produce the best possible Clean Air Act.

The process of setting ambient air quality standards and meeting the deadlines for attaining them shows the need for explicit separation of risk assessment and risk management. Under the statute, we set primary air quality standards based solely on evidence concerning public health, without considering the costs or other impacts of attaining those standards, and this is appropriate.

These standards, however, must then be attained by fixed deadlines. It is in this risk-management phase that we encounter implementation problems. Nowhere does the statute explicitly provide for consideration of the economic or other impacts of attaining a given standard by the deadline. Prudent public policy demands that those charged with achieving a goal be given the discretion to evaluate factors relevant to achieving that goal. Historically, the statute has been read to provide this necessary flexibility. We believe that the law should explicitly provide this discretion.

Congress has recognized problems with these deadlines in the past by extending them. The problem, however, is not with the particular dates chosen but with the inflexible nature of the approach. We are not repudiating the concept of deadlines. Indeed, we are in the postdeadline period right now, and our policy continues to make use of deadlines for most areas.

In some areas, deadlines simply are unattainable. The Los Angeles region, for example, is clearly not going to be able to meet the 1987 ozone standard. In those areas, we have required States to adopt specific measures rather than meet deadlines. For that type of situation, we think it is appropriate to expect very strict but realistic and enforceable measures to be submitted and adhered to as a quid pro quo for flexibility in the deadline.

The existence of a deadline that cannot realistically be met places us at the agency in an awkward situation of being unable to give full ap-

proval to an area that has done everything it reasonably can to meet the standards. This undermines the integrity of the law. We want to insure real movement toward the standard, and we would recommend that this approach be adopted in amending the act.

And while on the subject of deadlines, we fully support those provisions of S. 768 that explicitly grant the Administrator discretion in determining whether or not to impose sanctions upon areas that have not attained the standards on time. We also agree that any extension of deadlines should be coupled with appropriate antibacksliding provisions to insure that progress already made is not lost.

A second area in which the current act and S. 768 could better reflect the problems we face is in regulating hazardous air pollution under section 112. As you know, the Administrator testified last fall on this matter before the House Subcommittee on Oversight and Investigations, where he described many of the problems with this program. I would like to submit his testimony for the record.

Some of the difficulties were due to management problems we are now correcting and others result from the way the statute is now written. When we testified before Mr. Dingell's subcommittee, we were in the uncomfortable situation of having to concentrate on EPA's performance in this area, touching only lightly on the statute itself. I would like here to expand on the question of how section 112 could be made a better tool to deal with hazardous air pollutants.

Section 112 of the Clean Air Act is the primary instrument given us to regulate hazardous air pollutants. It requires the Administrator to "list" air pollutants which in his judgment "may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness?

Senator STAFFORD. Mr. Cannon, before we get further, I guess the Chair had better rule on your motion to incorporate some of the Administrator's testimony last fall in the hearing record here. Without objection, we will place it in the record. (See p. 50.)

Mr. CANNON. Thank you.

After listing a pollutant, the Administrator must establish an "emission standard" for that pollutant within 1 year. The emission standard must be tight enough to "protect public health" with "an ample margin of safety."

We have had a number of difficulties in applying this language to the situations we encounter. For example, where cancer-causing substances are concerned, our best current scientific knowledge leads us to presume that any level of that substance poses some risk of cancer, even though at very low exposure levels that risk will be very low. The present language of section 112 can be read to require that the Administrator drive down the risks to the vanishing point without consideration of any other factor. For carcinogens, this approach might lead to a virtual ban on many major industrial chemicals and accompanying economic disruption. In fact, the General Accounting Office in a recent report stated that this was the clear meaning of the statute.

We have assumed that Congress did not intend this result. We have, therefore, in implementing section 112, made judgments about safety and about the appropriate level of risk. It does not make sense for

us to regulate without considering such factors as the magnitude and extent of the risks involved, the certainty with which the risks are established, other adverse environmental effects of the emissions, and other consequences of controls to reduce those risks.

The fact is that not all hazardous air problems are equally grave. Some chemicals are more dangerous than others. Some are more widespread. Sometimes the bulk of the pollution comes from large industrial stacks and is amenable to control with national limits, and sometimes it comes from thousands of small industrial, commercial, and even residential sources that are extremely difficult to control. Yet, the statute provides no clear direction on whether and how to differentiate these situations.

Commonsense suggests that the solutions to these problems should, at a minimum, be affected by the size of the health problems they are aimed at. We believe that where we have made regulatory decisions, we are in accord with Congress intent and that the flexibility to consider all relevant information is an essential part of EPA's ability to carry out its mission. If we are correct, then Congress should move to make such balancing explicit in the language of the act.

S. 768 contains an automatic listing provision. Though I can understand why this might seem attractive, I think we cannot simply wish away the substantial scientific uncertainty that we must face and resolve in order to make responsible decisions here.

I think I will just leave my statement on section 112 as it is in my testimony and go on to some other issues. But I would like to make the point that we understand Congress impatience and unhappiness with the slow course of EPA's implementation of this section of the act, It extends all the way back to 1970 that the agency historically has had difficulty in implementing this section of the statute. But we believe that there are other and better ways to facilitate decisionmaking and to hold EPA accountable. Another point in that regard is, we would like to think that any approach would reflect the appropriate roles of both the EPA and the State and local agencies. At a minimum, we need to give the States technical help and expertise, and we want to provide that assistance.

Turning to another theme of my remarks, we recognize that States have become increasingly sophisticated in their air pollution efforts. Virtually all have undertaken substantial air quality improvement programs and have accepted a significant degree of delegation of program responsibilitiy from EPA. Indeed, the States, taken as a whole, now have a significantly larger enforcement staff than EPA and have started to take promising initiatives in cooperation with EPA.

We should recognize and encourage delegation of routine responsibilities for pollution control. We should give the States increased flexibility to tailor their efforts to local needs. EPA should focus on agency review of the overall State program and its major constituent parts, rather than on day-to-day decisions.

Accordingly, in conjunction with STAPPA and ALAPCO, who are also testifying today, we have developed a national audit program for State and local agencies. Through such an approach, we hope to build on the significant progress that has been made by the States and to find ways to further improve established State programs. This will

provide a greater role for the States, a more efficient mechanism for overview, and greater environmental improvement than the piecemeal review of discrete State actions.

In keeping with this goal, we favor the development of additional mechanisms by which fully approved State programs can eliminate the need for EPA review of individual actions. Thus, we endorse the S. 768 State operating permit program. Such an approach, coupled with an effective audit program, provides for an appropriate division of responsibility between the States and EPA and will yield significant environmental benefits.

However, since EPA's review under such an approach would focus on major elements of the States' plans, we feel that more realistic deadlines for Agency action should be established. Given the complicated nature of the provisions to be reviewed, 4 to 6 months is simply not enough time to conduct an adequate review.

In talking about the State and Federal relationship here, we are not suggesting that we move back to the days when the Federal Government had only an advisory role, and the 50 States had 50 different pollution control policies. Rather, we are suggesting that the statute should reflect the fact that the job of dealing with complex types of air pollution control problems throughout the country require a concerted and well-coordinated effort of Federal and State activity.

I would like now to discuss briefly with you the act's prevention of significant deterioration provisions for protection of air quality in those areas currently in attainment. As more areas attain standards, this program will help us assure that they remain in attainment, and we may find that it provisions have concomitantly greater impact as the economy continues to recover and growth occurs.

The present PSD system was created by EPA in response to a court order and without detailed congressional debate. In 1977, Congress ratified EPA's basic approach. We should begin now to scrutinize the program to make sure that its goals of protecting areas now meeting ambient standards, particularly national parks, are being achieved efficiently, effectively, and equitably.

The Administrator has requested an examination of the PSD system from the ground up, to evaluate how well it serves its purposes and suggest appropriate changes. We expect the results by this fall, and I hope that they will lead to a basic and thorough reexamination of the PSD program at that time. However, we must begin to lay the foundation now by streamlining the current system. I believe that S. 768 takes appropriate steps in this direction, and I would like to discuss only two of its proposed changes with you today.

S. 768, like the current law, makes the class I increment presumptively applicable everywhere except in national parks and similar areas. It also gives the States the freedom to decide that these requirements should not apply in certain areas. However, S. 768 seems to require States to make this choice within a very narrow window of time or lose the authority to make it. In our view, such a restriction on State discretion is inconsistent with granting that discretion in the first place. We recommend that no time limit be imposed to State reclassification of class II areas.

We also have reservations about the committee bill's approach to control technology requirements in the PSD program. This is purely

from an administrative standpoint. We are concerned that these requirements are likely to increase our administrative burdens but have little or no practical effect in terms of health or welfare relative to the current BACT requirement. We would be happy to discuss these concerns further with you or with your staff.

We also have several proposals dealing with mobile source control. We support changes designed to insure that vehicles meet emission standards in actual use and that our national investment in emission controls continues to pay off.

We have made great strides in reducing auto emissions, with new car standards representing a 95-percent reduction in hydrocarbon emissions, a 96-percent reduction in carbon monoxide emissions, and a 76-percent reduction NO_x emissions from uncontrolled levels. As a result of restrictions of lead in gasoline and decreased use of leaded gasoline, we have seen a dramatic drop in the blood lead levels of young children.

Yet, some of these gains may be jeopardized by fuel switching and tampering with auto emission devices. That is a serious problem. Fuel switching is now calculated to be occurring in about 13 percent of the auto fleet and tampering with emission control devices in about 19 percent of the auto fleet. It quickly destroys the catalytic converters and increases individual auto emissions by as much as 800 percent. We propose a number of steps aimed at this problem.

First, the act should be changed to make it illegal to sell so-called defeat devices, designed to disable emission control systems. At present, only the actual installation of such a device by dealers and service station personnel is clearly illegal. Current law does not forbid an individual vehicle owner from using the wrong fuel or disabling his own car's emission controls. We believe that these loopholes should be eliminated. The individual who disables his car's emission control system by using the wrong fuel might just as well be emptying bags of pollutants into the air, and this should not be permitted.

Another problem is that current law requires that all cases involving vehicle emission control tampering or the use of wrong fuel be brought in Federal court. This hampers enforcement, as these are essentially minor cases, comparable to traffic offenses, to which prosecutors and judges are understandably reluctant to give much priority. We believe that most cases should be heard before administrative law judges.

I would like just briefly to comment on a number of other areas. We oppose the provisions of S. 768 that would require a dual definition of sources for nonattainment programs. As you know, we have appealed to the Supreme Court a lower court decision requiring the use of dual definition, and we continue to believe that the law should not require it.

In addition, the control technology requirement for new source review in nonattainment areas appears to us to be no simpler than the current requirement, although it is renamed BACT. As I said regarding our PSD control technology concerns, we do not think that the added administrative burden is likely to result in any significant emission reductions.

Finally, some technical problems in enforcement of the Clean Air Act have surfaced in the implementation process. We think they call for some fine tuning. I have mentioned two here, which I will skip in

this reading, but there are a number of others that we will submit to the committee that involve making it easier for us in enforcing the statute. I will submit those for the record and for your consideration.

Let me stress, in conclusion, that we share the common goal of producing the best piece of legislation to further our greater shared goal of protecting our Nation's air. The questions we are raising today involve how we get there, not whether to take the road. We look forward to continued working with you on this critical task.

Thank you very much, and I will be happy to answer any questions.

Senator STAFFORD. Thank you very much, Mr. Cannon. Before we get to questions, my dear friend and colleague, the chairman emeritus of the committee, has arrived. Senator Randolph, I would welcome any preliminary statement if you wish to make one.

Senator RANDOLPH. Thank you, Mr. Chairman. In the interest of moving the hearing ahead, I believe that even though I might desire to make an opening statement, I would rather have questions to Mr. Cannon, along with the other members. I thank you very much.

Senator STAFFORD. All right, Senator. In that case, in view of the time constraints, I would propose to my colleagues that we limit ourselves, at least on the first round, not to exceed 10 minutes. Is that agreeable. We have two more witnesses to go. That being the case, let me start.

Mr. Cannon, could you describe in some detail what efforts the agency has underway to work with the States in controlling emissions of hazardous air pollutants?

Mr. CANNON. We have met a number of times with the STAPPA and ALAPCO, including a meeting just last week with representatives from the State and local agencies with the Administrator. We have had on-going staff-to-staff discussions about how we can tailor a program that would make the best use of State and local efforts that are already underway. We have also established a clearinghouse, where we are going to be able to provide the State and local governments with information available at the Federal level.

You can ask STAPPA and ALAPCO for their perspective, but we think we have a pretty good working relationship with them in this important area.

Senator STAFFORD. Are any of these relationships constrained by existing provisions of the Clean Air Act or any provision in S. 768?

Mr. CANNON. I omitted some of the discussion in my prepared statement, but I think I can refer to it. One constraint is that we read the present section 112 to require us to regulate all sources of a pollutant, once we have determined to list it. What this essentially has done is to make our process as slow as the slowest part. If we have doubts about one source category, we hold up the whole process. What that means in effect is that we cannot go ahead when we know that there is a hazardous air pollution problem from one source without fully considering all sources.

This has an impact on the States. Sometimes we look at a hazardous air pollutant, and it only has two or three or a very small number of sources, and they are obviously located in States or in local areas. It may be more effective to allow the State to handle that issue at the local level, rather than to develop a national standard which would

affect only a few sources. That is one area of constraint, and I have mentioned others.

Senator STAFFORD. In testimony on November 7 of last year, the Administrator said that the agency plans to announce decisions for regulating 23 suspected hazardous air pollutants within 2 years. He also said the agency anticipated announcing decisions on the need to regulate 8 or 10 additional pollutants in fiscal year 1986. S. 768 requires that decisions on at least 20 substances be made within 2 years of enactment and on 20 more within 5 years. Does the agency believe that these requirements can be met?

Mr. CANNON. Of course, we cannot disagree with the timeframes that you are suggesting, since they are about the same. What the agency would have difficulty with is an automatic listing provision. It is another subject which I did not discuss in my oral statement but is discussed in my written satement. The simple fact is, an automatic listing requirement might make us make decisions or might require us to make decisions that are not always in the best interest of the country.

First, it could make us decide not to list in order to avoid a listing decision that we did not think was based on adequate information. Second, it would require us to direct our resources in counterproductive ways. An automatic listing requirement would make us look at certain chemicals which we in the Agency might view differently with respect to their levels of hazard. In short, we think that an automatic listing provision would not serve our administrative interest or the interest of an effective overall hazardous air pollution program.

Senator STAFFORD. I am sure you know that the 1977 Clean Air Act Amendments required areas with serious oxygen and carbon monoxide problems to implement vehicle inspection and maintenance programs. What is the Agency's experience with the effectiveness of these programs, and would you care to comment on the provisions of S. 768 that require I&M where vehicle-related pollution is a serious problem?

Mr. CANNON. We have had, generally speaking, a positive experience with the implementation of an I&M program. We have to say that from time to time some States have vigorously resisted the imposition of an inspection and maintenance program, but in fact the program's efficiency is well demonstrated. In areas with inspection and maintenance programs, apart from the ozone or CO benefits received, fuel-switching and vehicle-tampering rates drop to less than half the national average in those areas. So there are many benefits to a well-designed inspection and maintenance program. As I said, generally we think this has been an effective program.

Senator STAFFORD. Thank you very much, Mr. Cannon.

Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Cannon, I wonder if we would flush out a little bit the reasons why the EPA has some problems with the hazardous pollution portions of the act, section 112. As I hear you saying, because some problems are centered in some parts of the country, in a few isolated cases, whereas some others are more widespread, with lots of smaller pollutants, because of the wide range of different sources of pollution,

the act is too inflexible; that is, it requires a listing if standards are not set by a certain period of time.

What statutory language do you suggest in order to handle that varied situation?

Mr. CANNON. I have deliberately not suggested statutory language in my testimony, because we have been working at some length with the staff of the committee on this very issue. We think that those discussions are going along well enough that we may be able to reach a mutually agreeable statute.

To respond to the actual question, we do believe that section 112 is an obtuse instrument for the harm that it is intended to get at.

Senator BAUCUS. Does the present language enable the EPA to have enough flexibility to work with the present obtuse language? Can you get along with the present language?

Mr. CANNON. To be perfectly candid about this thing, we have worked with section 112. Some would argue that we may have stretched it, that we have made a pretzel out of it in some respects. We have not yet had a court case on it; we expect one relatively soon. If we knew we were never going to get challenged in court, and we just thought we were doing what Congress wanted us to do, we would feel fine about the present statute. Unfortunately or fortunately, courts out there are going to construe our actions in light of what they think the statute means. It could be that then we would have more specific difficulties in implementing this particular section.

Senator BAUCUS. Would the same apply to flexibility that EPA now is undertaking with respect to those substances that are more dangerous than some others? Even though the present language is obtuse, is the present flexibility within which EPA is operating such that EPA can continue to operate the way that it is? At least in the Agency's viewpoint, someone might bring a lawsuit and question the legality of what EPA is doing; is that EPA's problem?

Mr. CANNON. Right. We think we are operating within the intent of Congress and within the meaning of the statute. We also think we are attacking the problems in their right priority. That is our position right now. The question is, What is a circuit court of appeals going to tell us about that when it gets down to answering the question?

Senator BAUCUS. In the statement of Mr. Ruckelshaus that you asked the chairman to put in the record, from November of last year before Chairman Dingell's committee, Administrator Ruckelshaus said that the EPA will meet the deadlines. He basically said:

> In addition, as regards our listing effort, we believe we can complete by the end of 1985 decisions for approximately 20 to 25 substances on a list of 37. In our judgment, that will amount for the overwhelming majority of the public health risks represented by the substances on the list of 37 and controllable under section 112.

Will the Agency still meet those deadlines as Mr. Ruckelshaus has stated?

Mr. CANNON. We are making every effort possible to meet that commitment that the Administrator made. It involves the cooperation of my office, the Office of Air and Radiation, and the Office of Research and Development. We are working on it, and I have gone over the schedules with my staff to see that we are going to be able to make 20 to 25 decisions by the end of calendar year 1985.

Senator BAUCUS. So you think that you will be able to?

Mr. CANNON. Yes.

Senator BAUCUS. What is wrong with deadlines? In the first part of your testimony, you said you believed in deadlines, that the States should have deadlines and that deadlines should be set. Yet, with respect to section 112, you say no deadlines.

Mr. CANNON. I would not say that we believe that deadlines are bad. However, we think that arbitrary deadlines frequently impose burdens and constraints on the administrative process that make us direct our resources into areas of lesser priority. That is one problem with deadlines. Another problem is that often—and I am not speaking with respect to any particular set of deadlines—deadlines do not recognize the burdens they impose on an agency to do something or even our ability to do a good job within the constraint of that deadline.

On the other hand, I am perfectly sympathetic and understanding of people who are outside the Agency looking in, wondering when the Agency is going to do something. We wonder ourselves.

Senator BAUCUS. I hear you. It is just my view that generally this world operates by deadlines, whether it is somebody in the media who has to meet a deadline, Congress has to meet deadlines, families that pay bills have to meet deadlines. However you face it, it seems to me that it is human nature to procrastinate. Agencies, as well as people, tend to put things off. It just seems to me that we need deadlines.

Now, we can question whether the deadlines are reasonable or not. Maybe they come to soon; or if not too soon, perhaps too late. But it seems to me that it generally helps to have deadlines. The agency, I think, then can come to Congress and say, "The deadline is a little bit short in this time period," or the agency could come to Congress and say, "We are getting close to the deadline, and for such-and-such reason we just cannot meet this deadline."

I tend to think that deadlines probably make more sense than not. The real question is if they are reasonable.

Mr. CANNON. We would not object to a deadline if we could sit down and tell you what we thought we really could do, taking a hard look at it. I agree that deadlines serve a useful function. Within the Agency, of course, we impose deadlines upon ourselves. We have accountability systems and tracking systems. That might strain credulity, but in fact we do have self-imposed deadlines, and we frequently meet those deadlines.

Senator STAFFORD. Senator, if you would yield, does your feeling about deadlines include April 15?

Senator BAUCUS. Unfortunately. Is my time up, Mr. Chairman?

Senator STAFFORD. No, it is not. You have about 3 more minutes.

Senator BAUCUS. Mr. Cannon, you said you are making every effort to meet the deadlines as stated by the Administrator. What budgetary needs do you have to meet those deadlines? Do you need more money? Do you have enough?

Mr. CANNON. Right now, we are evaluating our budget needs in the area of hazardous air pollutants. I do not have the answer right now, but we are evaluating it. If we feel we need more money, we are going to ask for more money.

Senator BAUCUS. But so far you are OK?

Mr. CANNON. So far we have been constrained. One of the problems is, as we have gotten into some of these issues, we have had to spend a lot more money than we thought we would have to spend initially. That was the original red flag that raised the issue of the allocation of resources. When once we began assessing that problem, we discovered that maybe we ought to be thinking over another several year period to look at our budgetary needs. So we are examining that right now.

Senator BAUCUS. As I understand it, certain of the 37 on the list have less priority in the agency compared to some others, due I guess to some danger index. What standards do you use in order to determine which substances on the list are top priority and which ones are not?

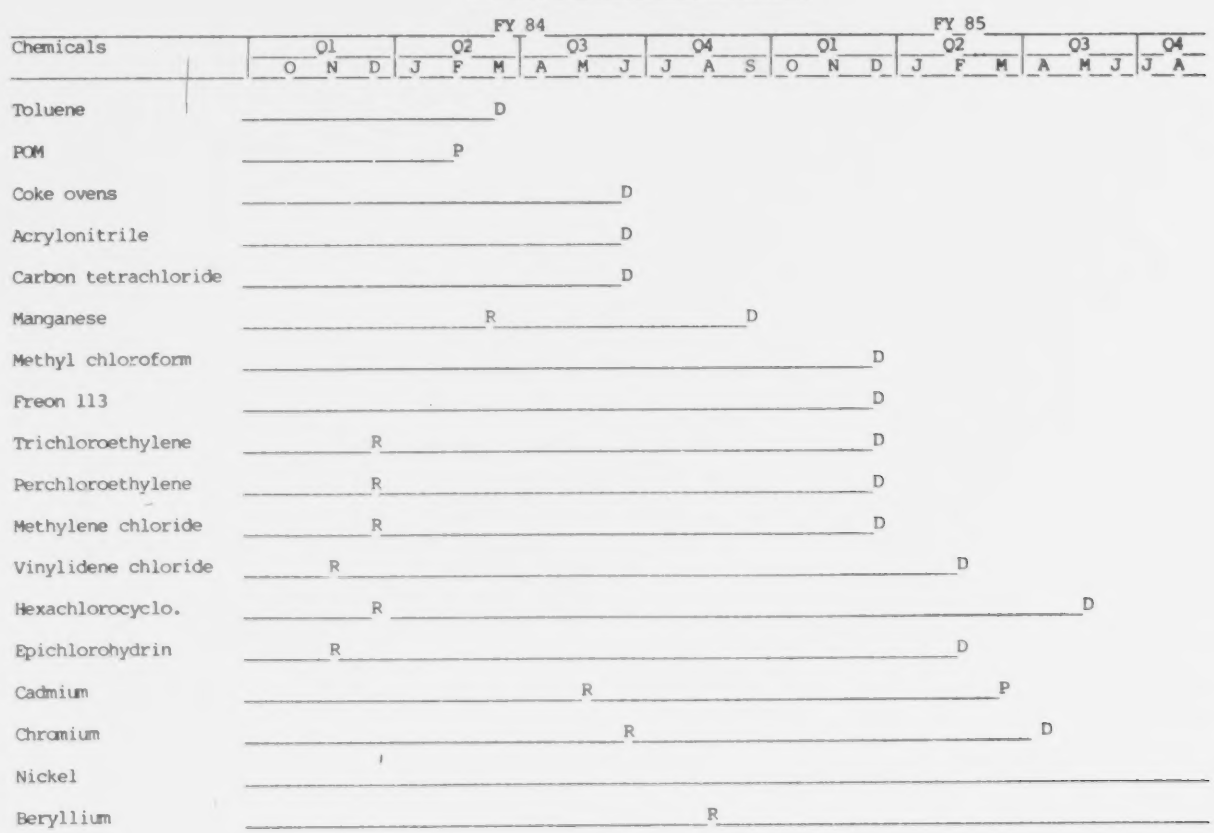
Mr. CANNON. I am not a scientist myself, and I am not quite sure I understand exactly the process that we go through, but the bottom line is that we try to go after the substances that we think are the riskiest and the ones that have the potential for widespread exposure. In other words, we like to think we are focusing our resources on those areas that potentially cause the broadest threat.

I would be happy to provide for you a list of the chemicals that we are presently working on and the status of those chemicals, if that would be useful to you.

Senator BAUCUS. That would help, and if you can, give some sense of the degree to which you weigh risk, exposure, and so forth. Thank you.

[The information requested follows:]

FY 1984/1985 Air Toxics Schedule



32-439 O - 84 - 2

Chlorobenzene	R	D
Chloroform	R	D
Ethylene oxide	R	D
Ethylene dichloride	R	D
Dioxin	R	D
Gasoline vapors*	R	
1,3 Butadiene*	R	
Phenol**		
Phosgene**		
Acrolein**		
Chloroprene**		
Acetaldehyde**		
Copper**		
Dibenzofurans**		

R- Release health documentation for external review
D - Announce decision (notice, list or no list)
P - Propose decision

* Regulatory authorities other than 112 being considered
** Health documentation to start in FY 84. Release no later than FY 86.

Senator STAFFORD. Thank you, Senator Baucus.

Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Cannon, on February 2, Mr. Ruckelshaus appeared before the committee and I criticized the performance of the Agency in a number of specific areas, one being the increase in sulfur dioxide emissions resulting from relaxations of limitations granted by the agency. There is some disagreement as to the precise quantity of the increases that will result, but there is no disagreement, insofar as I know, that there will be and are in fact increases as a result.

Mr. Ruckelshaus said, "Well, we do not have the legislative authority to deny these requests." I then asked him, "Would you like legislative authority? Do you not think it is a good idea?" He was ambiguous in his response and vague. Since that is an area under your specific authority, I ask you now the question: If you in fact do not have the authority to deny such requests, do you feel that we should make provision in the law to give you that authority?

Mr. CANNON. This is an area where we would like to work with you and your staff. At the time of that testimony and even before, we had been wrestling with the problem of how we grant a SIP revision that will allow an increase in emissions. As the administrator said, he feels uncomfortable about signing off on regulations which are essentially approvals of State plans that would allow these increases.

Since the time of the testimony, we have worked, within my staff and with other parts of the agency, to look at the kind of a plan we might be able to devise. I have to report to you that we do not have a plan right now because it is a very difficult issue. As you know, sulfur dioxide emissions will remain relatively constant throughout the rest of this century. But that is a result of some increases and some decreases. There is no uniform approach.

For example our first idea was to say: "Maybe there would be some way to have a cap on SIP revisions." That works inequities in the system which we are having trouble dealing with. It may get at some of the big problems, but it also gets us into other problems. You may know, we have some SIP revisions that are in the area of 40,000 to 50,000 tons. We also have some SIP revisions that involve 23 or 400 tons—a very small number.

We are working within the agency, trying to grapple with this problem. I was hoping I would be able to tell you more, as I sat there anticipating your question.

Senator MITCHELL. I urge you to press forward with your deliberation and your consultation with the staff on that, because this is an important area. We are never going to solve these problems if we simply permit continuing increases in emission of sulfur dioxide, let alone do anything to arrest the problem and begin reduction, which I think many of us want. We will be happy to work with you on that. I understand the complexity of the problem. I appreciate your commitment to this area, and we want to work with you on that and will do so.

In an unrelated area, I noted with interest your testimony regarding legislation on defeat devices, designed to disable emission control systems in automobiles. As you know, last year I introduced legislation

to strengthen the law in that regard. I will ask you—although your statement did not indicate it—do you contemplate including a prohibition on the manufacture of such devices, a provision which is contained in my bill?

Mr. CANNON. I think we would contemplate that. I have to say that I am not sure we have thought specifically about that issue. If we have not, it was an omission and not a deliberate attempt not to look at the manufacturer of such devices.

Senator MITCHELL. I think that will be a more effective method of enforcement, by concentrating the specific instances of violations subject to remedial action, and I would recommend that if you do not have that in your concept now, that it be included.

I have to say that while it probably makes good public policy to include coverage of individuals, I am not certain how effectively this could be implemented, and I wonder if you have given any thought to the problem of enforcement. There are tens of millions of automobile owners in this country. Have you given thought to the difficulties that would be involved in enforcement? Have you looked at the enforcement history of existing law, prohibiting tampering by dealers and manufacturers, garages and fleet owners—for example—in this area?

Mr. CANNON. First, our intent is not to set up hundreds or maybe thousands of enforcement officers at gasoline stations. We think that this language would give us the opportunity—in certain cases—around the country to go after a few violators and publicize the fact of those enforcements. We think that, once people realize that it is not just wrong—which I think most people realize—but that it is actually illegal, that knowledge will have a salutory effect if they see one or two enforcement actions or some limited number of enforcement actions.

We have been working with the States and with our regional offices in this regard. I can just speak as a person who has given talks on this subject and has had many interviews by newspapers and other media. They ask the question: "Is this illegal?" I have to say: "No, it is not illegal." That almost gives a green light to individual consumers when they see that. So, as much as anything, this would be an effort to close that gap and say it is also against the law to do this.

Senator MITCHELL. I think that makes some sense. By contrast, I deliberately excluded individual illegality from my bill, because I believe, first, you will arouse tremendous opposition that otherwise would not exist by people being told that they run the risk of violating Federal law if they work under their cars. This type of thing lends itself to the so-called: Get the goverment off-our-back argument, which as you know in modern English usage is second only to: You know.

I do not think you are going to have the ability to enforce that so that the benefits you get from individual illegality, in my judgment, are substantially outweighed by the opposition of the bill and the difficulty of enforcement. If you go after the manufacturers and the others already under the law, and you pursue that vigorously, I think you are more likely to get an aggregate greater benefit than from individuals.

Mr. CANNON. There could be some refinement. I think personally I am most concerned about fuel-switching. You might never be able to

stop people from working under their cars. Maybe there is a refinement we could work on. If people knew, when they drove into that gasoline station, that it was illegal for them to put leaded fuel in cars designed for unleaded fuel, I guess I still retain the view that it would have some effect, although I do not know precisely what effect.

Senator MITCHELL. I am heartened by your support for the bill I have introduced, and I am very open to any suggestions you have to improve it. I would like to discuss in more detail with you, in a circumstance which permits a more thorough exchange, the data or evidence that support any conclusions you have reached here in this area so that we can, together, move forward on it.

The other area that I think is absolutely critical, if we are going to deal with this problem of sulfur emission, is that we first have to stop the increase. Do not turn a locomotive, an automobile, or disastrous pollutants around until you arrest the increase first. That is a very critical thing, and I am thankful for your attention to that.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Mitchell. The Chair would next recognize Senator Randolph.

Senator RANDOLPH. Thank you, Mr. Chairman. This is related and not related to the testimony of the Assistant Administrator of the Environmental Protection Agency, Joe Cannon, who is with us today. However, I want the record to indicate there is a considerable and continuing criticism of William Ruckelshaus at the present time, and apparently it will continue, indicating that he is less than effective in the position that he holds for the second time and has softened his earlier position on the matters of keeping the environment as we want it to be, a better environment for the American people.

I want that on the record this morning, because I am constantly hearing what I call a carping criticism of a very good Administrator.

Now, Joe, your wife helps in a way to have me feel better toward you. She is related to the president of West Virginia University, Gordon Kee; is that right?

Mr. CANNON. That is right.

Senator RANDOLPH. Yes; that is very helpful to me.

Mr. CANNON. Does it help that I was his research assistant at one time?

Senator RANDOLPH. I did not have this question before we began the discussion, but it comes to me, when I hear you talk about national parks and State parks, that we realize, in a State like West Virginia, how important our State park system is. We have 33 State parks. They are not small State parks. They are parks that appeal to literally hundreds of thousands of people, not just West Virginians but from all the States of the Union.

We have one national park in West Virginia, at Harper's Ferry, about 65 miles to the west, where in the past year we had over 1 million visitors and where we employ 450 men and women, in connection not only with the park itself, which is historic, there at the confluence of the Shenandoah and the Potomac Rivers, but also because of the Mather Training Center, which pays tribute to Mather, the first Director of the Interior's Park Service program. And we have other programs there that are national in scope.

When we have that sort of a program in West Virginia, State and national, from the standpoint of parks, visited by millions of people each year, what comment have you to make about those parks? What are they doing now that they should not be doing? And what should they do that they are not doing now?

Mr. CANNON. First of all, I should say that I share your feeling. I am from the State of Utah, where I believe we have more national parks than any other State in the United States. These are a source of enjoyment and recreation not just for the citizens of Utah but, of course, for the whole country.

I have to say that I am not sure exactly what the State parks or the national parks could do. I know that I enjoy these parks myself.

Senator RANDOLPH. Joe, you mentioned them in your testimony today. Is that correct?

Mr. CANNON. Yes; we mentioned them. It was in respect not so much to what they were doing but in our mission at the agency to insure air quality protection around those national parks. We think that is a very high priority.

Senator RANDOLPH. I agree.

Mr. CANNON. From our perspective, that is something for which we intend to continue very strong support. I am sorry, I misperceived the question.

Senator RANDOLPH. You are saying what I wanted you to say, but earlier my attention was called to the fact that you were speaking of the park systems of this country, both State and national. Certainly, what you are saying is something that I would endorse wholeheartedly.

It is my understanding that the administration is not seeing and does not support amendments to what we call the "percentage reduction requirement" for a new source performance standard for sulfur emission from fossil fuel. You mentioned that type of fuel for utility boilers. Is that correct?

Mr. CANNON. The administration presently is not taking a position on percentage reduction.

Senator RANDOLPH. You know what the committee here has done. By a majority, we go along. I am not trying to call attention to the votes here, but we go along with the program as it has been carried out. Is that correct?

Mr. CANNON. We, at the Agency, go along with the program that is in the statute, yes.

Senator RANDOAPH. Yes, and we have believed that is sufficient as of the present time. That is the vote within the committee.

The inadequacy of the current law's provisions for controlling hazardous air pollutants, that continues to bother many of us, I am sure, including myself. Much of the control of cancer-causing materials is, I call it, merely incidental, as with the control of volatile organic compounds to attain ozone standards.

In a community like West Virginia's Kanawha Valley, which is a chemical area, one of the most important in this country, they do not have an ozone problem. Therefore, no controls on organic air pollution has really brought to our attention something that needs to be done or

not to be done. Yet, there are sizeable quantities of dozens of known or suspected carcinogens being emitted into our air.

This is why, Joe, in 1982 I offered the hazardous air pollutant provisions that are now part of S. 768. I recognize they are not a perfect answer, and our chairman understands that. Now, with the work recently being done within EPA and the States, they may not be the best available answers. Would you elaborate on the suggestions you have made, tell us how we could accomplish control of more—not fewer—hazardous pollutants, in more—not fewer—places, particularly as I have indicated in that chemical center, almost, of the world, the Kanawah Valley of West Virginia.

Mr. CANNON. As I mentioned during and after my testimony, we have spent, I think, a fair amount of time with your staff and the staff of the committee on this issue. We think that within the Agency we are making progress toward looking at these chemicals. We hope, presumably, that as we make decisions, we will make decisions that have been based on the best scientific information available about the risks and the extent of that risk.

I also mentioned that we are working with the State governments. The simple fact of the matter is that the States are very capable, and we should give them technical assistance to design solutions for particular problems. The problems in the Kanawah Valley are going to be different from the probems in New York City or in Philadelphia or in more remote areas. The kind of ideas that we are working on within the Agency and with your staff look at the problem in a much broader framework than the framework of section 112 of the statute.

Senator RANDOLPH. Thank you, Joe, for thinking in terms of the problems that are in the Kanawah Valley and others. I went into the Kanawah Valley recently. Union Carbide has a tremendous chemical complex with several thousand workers. Particularly I talked with the supervisors at FMC, where some 700 or 800 people are employed. I am conscious of what you are saying, and we need a continuing careful check. I think they want it. I felt the companies themselves did not want to be set aside by saying, "Everything is all right." They want, I believe, to do a job.

Now, you have pointed out that tampering and misfueling of auto emission controls are causing serious problems. Is that on foreign-made cars or American-made cars?

Mr. CANNON. I do not know if we have a study which shows if it is more prevalent on American cars or foreign cars. I do not know the answer to that, but I would be happy to look at it.

Senator RANDOLPH. Check it out, because this committee often puts as a part of a bill the words "Buy American," if you have studied what we have from this committee.

There is a related question, and I bring it to your attention. This is the use of inadequate replacement catalytic converts. EPA has estimated the demand for replacement converters over the next 3 years. It would be as much as 2.8 million. In the State of California, private surveys have estimated that 600,000 to 800,000 per year of these will be previously used converters salvaged from junk cars. Is that correct?

Mr. CANNON. I cannot speak to the exact numbers, but that appears

to be where many, if not most, of the replacement catalytic converters come from.

Senator RANDOLPH. We really cannot check on the quality, but we do know that in emission performance or durability of these used converters, we are dealing with some second-hand material, are we not?

Mr. CANNON. That is right.

Senator RANDOLPH. And we have to be very careful as to its use.

The final question, Mr. Chairman. Has EPA studied in depth this problem, and do you, as the Assistant Administrator agree with the need, the very current need, for additional authority and regulation in this area that I have brought to your attention?

Mr. CANNON. It has only recently come to my attention. We met recently with the manufacturers of emission control devices, and they presented the very compelling statistics as to the potential problems there. My staff and I are looking at what kind of a program we ought to have, what kind of an oversight program, or what kind of standards we might look at in terms of insuring quality. We do not want people to be replacing their catalysts by putting on catalysts that have been burnt out or are no good. That is just as bad or maybe even worse than having no catalyst on in the first place. This is a problem that has recently come to our attention, and we are looking at it within the agency.

Senator RANDOLPH. Mr. Chairman, I stayed within my 10 minutes. Now, don't say I didn't, because I worked so hard.

Senator STAFFORD. Senator, I am going to say you did. Thank you very much, Senator Randolph.

Senator Chafee.

Senator CHAFEE. Mr. Cannon, I would like to return to the questions that Senator Mitchell was asking along that same theme of the sulphur dioxide problem. It seems to me that we are involved in a logjam here. This committee, as you know, has sponsored and will again support, I am quite certain, a strong acid rain provision. What the chances of that are on the floor of the Senate or in the House itself are certainly problematic, based on past experience and what we know now.

The agency, as enunciated so ably by the Administrator, has indicated that they wish to pursue further research on the matter, and that is an honorable position. The Administrator outlined his thoughts on that, and so be it. In other words, we are in a conflict.

But meanwhile, we are not even getting control of the SO_2 levels as they currently exist. So I would like to explore from you what can be done or what tools can we give to strengthen the existing powers you have, specifically the SIP's.

As I understand it, if an area is in attainment, and that area wishes to increase its discharges of SO_2, there is nothing you can do about it. The SIP comes in that way. You are powerless. As a matter of fact, if you do not accept it, they can sue and force you to accept it. Is that correct?

Mr. CANNON. That is our feeling, that is exactly correct.

Senator STAFFORD. Would the Senator yield, just so we both understand this. If within the ambient air quality standards, a source wishes to add to its polluting of the atmosphere with SO_2, they can only do so up to the limits for ambient air quality standards within that area. Is that not true?

Mr. CANNON. That is correct.

Senator STAFFORD. So they do not have an unlimited right, a carte blanche.

Senator CHAFEE. No, no. That was part of my question. They were below the attainment requirements and thus have this latitude. They can go up, as the chairman so well pointed out, and there is nothing you can do about it. Therefore, we are not only holding stead in some instances; in some instances, we are getting worse.

Mr. CANNON. As I mentioned to Senator Mitchell, in the net, we probably are keeping emission contant and maybe even in modes declines. In the net, we probably are not getting worse, and we are not getting better. What that trend line shows is the result of some increases and some decreases in different areas of the country.

Senator CHAFEE. What bothers me is that while this logjam goes on between what this committee would desire and what might well be achieved on the floor or in the other body, meanwhile we are not making much progress. As I understand it, just the utilities washing their coal would accelerate or contribute significantly to the reduction of SO_2; is that correct?

Mr. CANNON. Sure, increased coal washing would result in less sulfur emission.

Senator CHAFEE. Is this an expensive process? What can we do to achieve that step, which is a modest one. It is not as complicated as scrubbers or going to only low-sulfur coal. What I am seeking is to make some progress in this area. I fully support the committee. I am a cosponsor of the legislation to make the significant reduction of 12 million tons. But that has its problems, if we are realistic. So what can we do in the interim?

Mr. CANNON. You mentioned coal washing. There is a range of costs, of course. Some coal washing can be very cheap, and as you get more and more sulfur out, it can get more expensive. If I could just go back a little bit to what the Administrator spoke about when he was here, it gets down to the undergirding philosophy of the statute, and that is the issue that we really are grapping with here.

The statute, the way we view it and the way I believe it is generally viewed, is not an emission-reduction statute per se. It is more, if I could characterize it, an ambient air quality attainment statute. So when you get into this area of discussing what you can do with the problem that we have been talking about, you are starting to move up to reexamining that philosophical issue of whether the statute should be going after total loadings or whether it should be designed at achieving attainment of the air quality standards.

I just say that as background, because I think it is important to explicitly recognize that that is the kind of problem we are dealing with. It would make it a lot easier to discuss. In other words, by saying we want to get a reduction from that trend line, we are really attacking the issue of total loadings and moving away from the idea of simply meeting the ambient air quality standards.

Senator CHAFEE. I must say, the price of fame, which apparently is to have television in here, is costly as far as one's eyes go.

Senator STAFFORD. If the Senator would yield very briefly, the Chair would suggest to all members of this committee that if they really want to understand what coal washing means on a very large generat-

ing plant, what scrubbers mean, what fuel-switching to low-sulfur coal in bag houses mean, I would heartily recommend a day with the Board of Directors of TVA, which can explicitly show what the problems may be, what the cumbersomeness of some of the equipment is and how expensive it is. Your chairman spent a couple of days with them, and it was a real education. I recommend it.

My recollection is that coal washing, after you get beyond about a 20 percent removal of the sulfur, begins to remove so much coal with the sulfur that it becomes economically unfeasible to do it. Is that your understanding?

Mr. CANNON. I do not know if it is at the 20-percent level, but there is a range where it becomes cost-ineffective to do it.

Senator CHAFEE. Mr. Chairman, I appreciate the point you made, and I would like to take that trip. I am sure it would be valuable. What I am really getting at here—and I am repeating myself—is that because we are not getting the whole hog, there is no point in not making some progress. I am not asking that we get 100 percent through coal washing. If we got 18 percent, that is 18 percent we do not have now. What tools can we give you, specifically in the SIP's? Would that be a contribution?

Mr. CANNON. I did not mean to deflect the question. I was only giving you the background of the kind of philosophical problem you are dealing with. We are looking, as I mentioned to Senator Mitchell, within the agency and discussing what it is we can do. First of all, we are trying to figure out what the practical result could be. Then we would look at whether we needed statutory authority. Right now, mittee—I have not talked with the chairman or the others—it looks as if we are going to be tied up for a while on working out a solution to the acid rain. If we can make some steps forward, I just think it would be very beneficial for the country as a whole.

Senator CHAFEE. I would urge that you continue your research on that, your survey of the existing law. Just as one member of this committee—it looks as if we are going to be tied up for a while on working out a solution to the acid rain. If we can make some steps forward, I just think it would be very beneficial for the country as a whole.

For example, the tall stack policy. Is that continuing, as it has been? There is no change in that?

Mr. CANNON. We have just recently—at least relatively recently—had a decision from the D.C. circuit on our tall stacks regulations. We are in the process of revising those tall stacks regulations to give lesser credit in general. Of course, as with every regulatory structure, there are different examples of things that we have not always fully thought of. But we are reviewing them and revising them in light of the court's decision. We believe new regulations will give some very significant reduction in SO_2 emissions.

Senator CHAFEE. I hope so. Mr. Chairman, I think your suggestion is a good one, to go down and see how practically this is done. I would like to go, and maybe some others on the committee would go down, too.

Senator STAFFORD. I think that would be great. Thank you very much. It occurred to me, not being entirely serious, that if we required

all the stacks to be reduced to 50 feet, the people immediately adjacent to the plants that are causing our problem would then be the ones who were taking the brunt of the suffering instead of those several hundred miles away.

Senator Baucus, do you have further questions?

Senator BAUCUS. A couple more, Mr. Chairman.

Mr. Cannon, as you know, current law requires new sources of toxic air pollutants regulated by the agency to obtain permits. My question is: What about the existing sources of the same pollutant? Is there, in your judgment, a public health rationale for continuing the distinction between new and existing?

Mr. CANNON. There is no distinction between new and existing in section 112. When we devised the national emissions standard for hazardous air pollutants under section 112, most of our analysis goes into the effect on existing sources and not new sources. One of the benefits of section 112 is that it is not related just to new sources but to both new and existing.

Senator BAUCUS. Should existing sources also have permits?

Mr. CANNON. Maybe I need to check. I do not think we presently issue permits for section 112 sources. We issue an emission standard. The framework of the Clean Air Act is not a permit system per se, certainly not at the Federal level. We require certain emission standards and require the States to impose certain emission limits. Except in the case of construction in certain areas, we do not have a permit program.

Senator BAUCUS. How many existing sources are today covered by section 112 regulations issued to date?

Mr. CANNON. I would have to get that to you. I do not know the number. We have four hazardous air pollutant standards, and we are in the process of producing a few more right now. But I do not know the number of existing facilities affected. Presumably, the overwhelming majority of the sources affected would be existing sources, because the new ones coming on line would be subject to those standards.

Senator BAUCUS. My basic question is, Is there any rationale in the degree to which we control existing versus new sources?

Mr. CANNON. As I said, that is the benefit of section 112. As opposed to proceeding under section 111, which does relate to new source performance standards, section 112 discusses hazardous air pollutants in terms of all the sources, existing and new.

Senator BAUCUS. But a pollutant is a pollutant, whether it is existing or new. Are you saying that they should be handled the same way, with respect to the effects on the public?

Mr. CANNON. I guess I am not quite sure how to respond. We treat hazardous air pollutants the same, whether they come out of a new source or an existing source. In other words, once we have promulgated a standard under section 112, there is no difference in that standard whether the facility is new or existing. It is the same standard.

Senator BAUCUS. Is it not true that the EPA decided recently not to regulate polycyclic organic matter as a general class under 112?

Mr. CANNON. That is right. Actually, the decision was not under section 112. It was under another section, but that is correct.

Senator BAUCUS. That does not affect, does it, EPA's pending decision whether or not to regulate or come up with some way to study the health effects of woodsmoke?

Mr. CANNON. No, it does not. In fact, it illustrates one of the problems we have with section 112, more than our unwillingness or our inability to look at woodburning smoke. Under section 112, the problem with listing polycyclic organic matter is that we are not quite sure how we would regulate it under section 112. My own view is that it is one of the reasons we stopped short of listing it. We still recognize that nearly 40 percent of polycyclic organic matter comes out of woodburning stoves, and as you are well aware, we have a fairly vigorous and active program looking at the effects of woodburning smoke pollution.

Senator BAUCUS. Is the EPA going to go ahead with the health effects study concerning wood smoke?

Mr. CANNON. Right. We are also, as you know, engaged in looking in general at air carcinogens. Our first project under that policy is going to be to look at the effects of woodburning smoke. We are looking right now at what pilot city we should choose and looking at the scientific criteria for the different proposals.

Senator BAUCUS. What is the status of that project?

Mr. CANNON. I think maybe in the early spring we will have made a decision on that part of the study.

Senator BAUCUS. I strongly encourage the agency to go ahead. This Senator, as well as the chairman, I know, is very interested in that kind of study. It is a big problem in the country.

Mr. CANNON. There is no question, this is a fairly pervasive problem.

Senator BAUCUS. Particularly in winter months.

Mr. CANNON. Sure.

Senator BAUCUS. Thank you very much.

[Mr. Cannon supplied the following information:]

Question. How many sources are covered by NESHAPS requirements?

Answer. 1,186 sources are covered by promulgated NESHAPS. Approximately 1,200 additional sources will have to reduce their emissions if the proposal standards for arsenic, benzene, and radionuclides are promulgated.

Senator STAFFORD. Thank you very much, Senator Baucus, and thank you very much, Mr. Cannon. We appreciate your coming up here and testifying this morning.

The committee will next hear a panel, consisting of Mr. Randolph Wood, administrator, Air Quality Division, Department of Environmental Quality, Cheyenne, Wyo., speaking on behalf of the State and Territorial Air Pollution Program Administrators; and Mr. Donald Arkell, director, Lane Regional Air Pollution Authority, Eugene, Oreg., speaking on behalf of the Association of Local Air Pollution Control Officials, in Washington, D.C.

The Chair would ask our guests who are leaving to do so as quietly as possible so that we can continue with the remaining witnesses.

Mr. Wood, as I said earlier, your full statement will be placed in the record. In view of the constraints of time, the Chair would appreciate it if you might, in view of its length, summarize it before the committee.

STATEMENT OF RANDOLPH WOOD, ADMINISTRATOR, AIR QUALITY DIVISION, DEPARTMENT OF ENVIRONMENTAL QUALITY, CHEYENNE, WYO., ON BEHALF OF THE STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

Mr. WOOD. Mr. Chairman and members of the committee, I am Randolph Wood, administrator of the State of Wyoming's Air Quality Division of the Department of Environmental Quality. I appear here today on behalf of STAPPA, the State and Territorial Air Pollution Program Administrators, to present the association's views on S. 768. As you are well aware, STAPPA is the national association of State air pollution control officials in the 53 States and territories in the United States.

At this point, I think it is appropriate for the members of STAPPA to give credit to what we perceive to be a vast improvement in the relationship between the States and EPA. Over the past several years, as you have heard our testimony before this committee and other bodies, we have expressed some serious reservations about our relationship with EPA. I am happy to tell you today that we have an excellent relationship with Mr. Cannon and others at EPA, and we are very pleased with that.

The administrators of State air pollution control programs derive their mandate from section 101(a)(3) of the Clean Air Act, which provides that States have the primary responsibility for implementing our Nation's clean air laws. These officials are working professionals in the field and collectively have had hundreds of years of experience in directing air pollution programs. Consequently, we believe we offer this committee a unique perspective on the proposed legislation.

In reviewing S. 768, STAPPA used as its frame of reference a set of formal policy recommendations which is attached to my formal statement, and I request that it be included in the formal record.

Senator STAFFORD. Your entire statement will be in the record.

Mr. WOOD. STAPPA is pleased that S. 768 addresses many of our concerns. We are encouraged that the bill, one, retains the existing standard-setting procedures; two, contains provisions to expedite the approval of State Implementation Plan; three, strengthens the Federal hazardous air pollution control program; four, improves the program for prevention of significant deterioration; five, extends attainment deadlines where appropriate; six, requires a substantial reduction in sulfur dioxide emissions to abate acid rain; and seven emphasizes the role of EPA in supplying technical assistance and support to the States.

We offer the following specific comments on the bill. With respect to National Ambient Air Quality Standards, STAPPA strong supports the bill's provisions for retaining the existing standard-setting process under section 109 of the act. The association believes that the National Ambient Air Quality Standards are the very heart of the act, because they specify the ambient concentrations of specific air pollutants that must be maintained for the protection of the public health and welfare. It is imperative that the primary standards con-

tinue to be based strictly upon health concerns and set at levels which insure that public health is protected with an adequate margin of safety.

Since the National Ambient Air Quality Standards are so important, it is essential that these standards be promulgated and revised in a timely manner. Unfortunately, this has not always been the case. In fact, State air pollution control officials have been extremely frustrated over the unnecessary delays in revising both the particulate and the nitrogen dioxide standards. While STAPPA is pleased that EPA soon will be announcing revised standards for both pollutants, we believe these lengthy delays must be avoided in the future.

Parenthetically, I would state that I understand that a proposed standard for oxides of nitrogen was proposed yesterday in the Federal Register. We, therefore, urge the Senate Environment and Public Works Committee, through its oversight role, to ensure that EPA revises the national ambient air quality standards according to the schedule set forth in the act.

Over the years, States have become increasingly concerned with the cumbersome and lengthy process of Federal review and approval of State implementation plans (SIP's). When a State submits a SIP revision to EPA, it often has had to wait several years for EPA to approve the proposal. This inaction has led to uncertainty for States and industry, delays in construction and economic development, and ill feelings between States and EPA. While EPA recently has expedited its review of SIP revisions, we still believe that the existing SIP procedure can and must be improved.

STAPPA compliments the sponsors of S. 768 for recognizing the inherent deficiencies in the existing SIP process and for recommending a program for automatic approval of SIP actions when EPA has not acted within a specified time.

With respect to new source review, STAPPA recommends that the threshold limit for determining which facilities are subject to new source review requirements be 50 tons per year, rather than 100 tons per year as specified in the bill. Since approximately one-half of the States are precluded by State law or policy from adopting regulations more stringent than Federal rules, we are concerned that the bill's provisions will prevent State officials from adequately regulating these smaller facilities.

STAPPA is pleased that S. 768 recognizes operating permits as a legitimate alternative to submitting each proposed SIP revision to EPA for review and approval. We believe the program will lead to more effective regulation of existing facilities and better relations between EPA and the States.

Concerning prevention of significant deterioration, STAPPA agrees with the committee chairman when, in reporting out S. 3041 in 1982, he characterized the PSD program as an air resource management tool. The PSD program provides a unique mechanism for States to determine how to use and protect the air in areas where ambient standards are maintained. However, in order for any management tool to be most useful, it must embody sufficient flexibility to allow its application over a wide range of circumstances. As you have heard over the past three years, the PSD program is extremely inflexible and thus

has not enjoyed the widespread use by the States that is both desirable and necessary.

STAPPA believes that S. 768 contains several significant improvements to the existing PSD programs. We agree, for instance, that the class III increment system should be eliminated. However, we strongly urge the committee also to eliminate the short-term increments for both class I and class II areas. Some may argue that eliminating short-term increments will result in decreased protection for class I and class II areas. We submit, however, that the clean air resource management objectives can be achieved by using annual increments.

In past discussions of the PSD provisions of S. 3041, the committee has recognized the technical and practical problems associated with the short-term increments. I, therefore, will not attempt to recount all of these problems. However, since some have expressed concern that the extra protection provided by the short-term increments is needed for some biological elements or air-quality-related values, I would note that the increment system was not intended to provided all of the protection that was to be afforded by the PSD program. Rather, section 165(d)(2)(C)(ii) allows a Federal land manager to affect a permitting decision when he determines that an adverse impact is unacceptable, notwithstanding projected compliance with any of the increments. In class I areas, this is an extremely important provision, since the increments themselves are arbitrarily derived and may not provide adequate protection for a sensitive air-quality-related value.

STAPPA strongly supports the provisions of S. 768 under which a State may consider its own needs and objectives when determining whether to eliminate the class II increments in an area. We believe this is a rational part of the clean air resource management process.

We suggest, however, that the committee simplify the process for "opting out" of the increment system. The provisions in the bill for developing 20-year air-quality goals, for instance, appear to be administratively complex with no apparent commensurate benefit. Rather than impose these burdensome planning requirements on the States, we recommend that best available control technology be required on all sources emitting 50 tons per year, in place of the 100-ton-per-year limit in the Clean Air Act. We believe that this change will provide emission reductions that will more than compensate for any anticipated environmental effects associated with "opting out" of the class II increments or deleting the short-term class I increments.

STAPPA also is concerned with the provisions of the BACT review under the PSD program. We do not believe it is necessary to mandate that States consider, but not necessarily adopt, the most stringent controls required of similar facilities. State air officials routinely survey emission limits of other similar facilities to insure that these standards are based upon the most recent and reliable information. In fact, STAPPA has been working closely with EPA over the past 2 years to improve the BACT/LAER clearinghouse, a data base which allows air officials throughout the country to review recent decisions on technology-based determinations.

STAPPA also questions the provisions of S. 768 that exclude fugitive emissions when determining increment consumption. Directors of State air pollution control programs are charged with managing the

total clean air resource and are thus concerned with all emissions, regardless of their source. Fugitive emissions consume increments of clean air, and we believe that these emissions, where quantifiable, should be included in emission totals. The effects of emissions from stationary sources cannot be differentiated from those of fugitive sources; consequently, we must be equally concerned with both.

STAPPA offers the following comments on the nonattainment provisions of S. 768. First, we agree with the provisions of the bill that delete the lowest achievable emission rate [LAER]. We suggest that LAER be replaced with best available control technology [BACT] for all new and modified sources emitting more than 50 tons per year of a pollutant. Our recommendation would make the technology requirements consistent for all new or modified sources, regardless of whether they locate in a PSD or nonattainment area.

Second, with respect to inspection and maintenance, STAPPA believes that the provisions of S. 768 are too complex. The association recommends that I&M only be mandatory for areas unable to attain the carbon monoxide or ozone deadlines by December 31, 1987, or for areas that have not achieved "reasonable further progress."

Third, State air officials oppose the construction ban. The association believes that in the instances where a State has either not submitted an adequate State implementation plan or has not effectively implemented its plan, EPA should be required to promulgate and/or implement the State's air quality control program. However, if Congress elects not to eliminate the ban, we support the alternative "offset" provisions contained in S. 768.

Fourth, we agree that the deadlines for attaining the National Ambient Air Quality Standards for all of the criteria pollutants should be extended. While we are not prepared to comment on the specific extensions proposed in the bill, we believe that the deadline should be extended on a case-by-case basis in areas where severe and persistent air quality problems exist. If a deadline is extended, however, we recommend that the area be required to achieve additional emission reductions.

Finally STAPPA concurs with the provisions of S. 768 that retain the growth allowance in nonattainment areas if certain conditions are met. These conditions, including an approved emissions inventory, BACT on 50-ton-per-year sources, and "reasonable further progress", already are routinely administered by most States.

STAPPA believes that most elements of the acid rain control program in S. 768 are appropriate. The association believes that acid rain is a serious problem and that steps should be taken now to begin controlling its adverse effects.

We recommend that Congress require an 8- to 10-million-ton reduction of sulfur dioxide emissions by 1995 in the 31 States east of or contiguous to the Mississippi River. We suggest that the reductions be achieved in two phases. The first phase would begin immediately and would require that sulfur dioxide emissions be reduced by the amount that could be obtained through the use of low-cost readily-achievable techniques, such as coal washing, low NO_x burners, least emissions dispatching, and so on. The second phase would be accom-

plished by 1995, or by 1990 if fuel-switching is used, and would achieve the remainder of the 8- to 10-million-ton reduction.

During phase I, we suggest that the National Academy of Sciences conduct a study to determine whether the 8- to 10-million-ton reduction or the regional designation—that is, the 31 States—should be altered. If, based on the recommendations of the NAS study, alterations appear to be necessary, EPA or Congress would have to make an affirmative decision to change the program. If no action is taken, phase II would become immediately effective.

STAPPA agrees that each State's emission reduction should be based upon the State's percentage of utility emissions in excess of 1.5 lbs/mm Btu. We also agree that States should be able to select any reduction measure they desire, including early retirement, energy conservation, fuel switching, and so on. By providing States full flexibility in determining how they meet their required reductions, the States will be better able to devise the most cost-effective strategies. This is an essential requirement for a program whose costs are estimated to be over $2 billion per year.

We support the requirement that States in the control region submit State implementation plans to EPA for approval. We also suggest that each State be allowed 18 months to revise its SIP, and that EPA be given 6 months to approve each plan. In the event a State does not develop and implement an appropriate plan, we recommend that a Federal standby plan be implemented in that State.

STAPPA's acid rain control recommendations differ from those in S. 768 in one key aspect, that of financing the control program. Under our proposal, we would recommend a funding mechanism to provide all or part of the capital costs of control required to meet reduction requirements beyond phase I.

STAPPA is concerned with the provision in section 185 of S. 768 that penalizes States as a result of inaction by EPA. Section 185(b)(4) specifies that sources which are not in full compliance with the applicable implementation plan for sulfur dioxide in effect on January 1, 1981 will be subject to certain penalties. Our concern is that prior to January 1, 1981, several States, including Michigan and North Carolina, proposed to revise their SO_2 SIP's to reflect more accurately attainment of the National Ambient Air Quality Standards.

While in these cases, the proposed revisions were less stringent than the existing Federal SIP, the revisions nonetheless were legally acceptable. Unfortunately, these revisions were not acted upon by EPA in a timely manner and, as a result, these States would be legally subject to the more stringent provisions and the penalties under the bill. To address these concerns, STAPPA recommends that this provision be modified to exempt not only SO_2 SIP's in effect before January 1, 1981, but also SIP's proposed before this time and subsequently approved after this date.

With respect to hazardous air pollutants, as Mr. Cannon has already told you, STAPPA and ALAPCO, in association with EPA, have formed a toxics policy work group in recent months, and through that work group have identified what we think is a better method of dealing with hazardous air pollutants. Our proposal would amend section

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112 by simplifying the listing process. It would require sources of listed pollutants to install best available control technology on both new and existing sources. It would also provide for an accelerated research program on the degree of risk and methods for reducing risks to health posed by the listed substance. And it would require EPA to provide guidance to the States to assist in determining what additional controls, if any, are needed to protect the health.

It is our concern that, with respect to hazardous air pollutants, the section 112 program does not get to what we think at the State level may be the vast majority of the instances where public health might be adversely affected. These are the small sources which are distributed across the entire United State which may never be associated with a section 112 program. We think that is important.

We have also instituted with EPA an air toxics clearinghouse, where we are hopeful we are going to be able to address these smaller sources more effectively.

With respect to mobile sources, we think that title II of the Clean Air Act is fundamentally sound and that current vehicle standards have been demonstrated to be feasible cost-effective, and appropriate. We have some specific comments which I will not describe.

Our final point addresses funding under section 105 of the Clean Air Act. Under the chairman's bill, the Congressional Budget Office has estimated that State and local agencies will need an average increase of about $15 million each year for the next 3 years. As you are well aware, such an increase in funding, at least on the Federal level, has not been proposed. We would urge you to look at that carefully because without proper funding, we are not going to be able to do our job, either under the existing Clean Air Act or with the provisions of S. 768.

I would be happy to answer any questions you may have.

Senator STAFFORD. Thank you very much, Mr. Wood. I will say that coming from Wyoming, one of the most valuable members of this committee who is not able to be with us this morning is your own Senator Alan Simpson. He has been with the committee throughout his tour of duty here in the U.S. Senate.

Now we will go to the other member of the panel, Mr. Arkell. I see, Mr. Arkell, that you are from Eugene, Oreg. That is another State that has a very good reputation as far as environmental issues are concerned. I do note that kicking around all those acronyms, including yours and those of the States, remind me that about 16 or 18 years ago, when Lyndon Johnson was the new President, a bunch of so-called "moderate Republicans," of which I was one, became concerned that we did not want to be in a posture of total opposition to the President.

So we decided we should have some alternative programs. We spent one late night working some out, and then somebody said, "When we meet the press, what will be the acronym? What will we call the programs?" Somebody else said, "Let's call them Constructive Republican Alternative Programs." We abandoned that rather hurriedly.

No, that will not come out of your time, Mr. Arkell.

STATEMENT OF DONALD ARKELL, DIRECTOR, LANE REGIONAL AIR POLLUTION AUTHORITY, EUGENE, OREG., ON BEHALF OF THE ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

Mr. ARKELL. Thank you, Mr. Chairman. My name is Don Arkell, and I am director of the Lane Regional Air Pollution Authority, which also has its own acronym ALAPCO. I am appearing today on behalf of ALAPCO, where I serve as president.

ALAPCO is a national organization representing over 100 major metropolitan areas in the U.S. cumulatively, these organizations are responsible for protecting over 94 million Americans from the adverse effects of air pollution.

We, too, would like to compliment the committee. We also would like to compliment the U.S. Environmental Protection Agency for having improved the partnership arrangement with State and local agencies.

ALAPCO has developed a set of legislative and administrative recommendations for changing the Clean Air Act, a move which we believe is long overdue. I wish to submit those to the committee for the record.

Senator STAFFORD. We will make them a part of the record at this point.

Mr. ARKELL. We do have some specific comments. Most of our positions are consistent with the remarks you heard from Mr. Wood. I would like to highlight, with your permission, a few specific points.

We believe that national ambient air quality standards should be set at the Federal level. Primary standards should be set to protect public health. We believe that the balancing mechanisms with other interests should occur during the process of developing SIP's, new source performance standards, and so on.

We concur with STAPPA that the State implementation plan mechanism has proved to be a lengthy and cumbersome experience for local agencies. It is not uncommon, for example, for a local agency to award a short-term variance to an industry. By the time the variance expires and the industry has returned to compliance, the Federal agency has yet to complete its review. It is a fruitless exercise, in our view, to initiate a SIP revision under these circumstances.

We generally support the measure in the bill which allows automatic approval of State implementation plans as a forcing mechanism to assure expeditious consideration of SIP revisions. We are concerned, however, that a provision of the bill which allows this time to elapse without a decision, if there is an objection filed, could produce an inordinate amount of time for dealing with the objections. We do not object to some additional time for review and objection, particularly if the compliant is substantive and is initiated at the local level. We suggest that there still be a deadline, however, beyond which the SIP becomes automatically approved.

Under the Clean Air Act, an industry which applies for a permit to construct and operate faces a bewildering and complex set of rules, including new source performance standards, nonattainment, new

source review, prevention of significant deterioration, and other requirements. ALAPCO believes that the Clean Air Act should be amended to provide a concise and integrated policy for regulating these facilities. We recommend, as a basic set of requirements, that a new or modified source be defined as any individual process or activity capable of emitting an air pollutant.

The new source should install best available control technology if it emits more than 50 tons per year, and be prevented from "netting out" of new source review and other BACT requirements. For nonattainment areas, we recommend that offsets continue to be required.

In general, local air pollution control officials do not recommend mandatory preconstruction monitoring requirements, except in unclassified areas. These are areas that typically do not have adequate ambient data to determine whether they should be considered PSD or nonattainment. An area's air quality classification has a significant effect on the requirements industry must meet when locating in that area. We also have a strong objection to excluding fugitive emissions from the applicability requirements. Our ambient monitoring devices are not smart enough to determine whether a pollution comes from a stack or from a fugitive source. We would urge the committee to consider including fugitive emission under the applicability requirements.

We agree with S. 768 that there should be a length of time within which a company is protected from retrofitting requirements, provided they have met the BACT standards. However, we think that the 10-year period may be too long in all cases. There are some States which have a 5-year no-retrofit requirement, and we suggest that the bill limit the retrofit requirement to 5 years and allow extensions on a case-by-case basis.

ALAPCO has also been participating with EPA and STAPPA on seeking solutions to control hazardous air pollutants. We believe that controlling air toxics is the most critical air quality issue facing us at this time. Our citizens are demanding that we take action now, particularly to control the smaller sources that ordinarily would go unregulated under a Federal program.

Currently, most efforts to control hazardous air pollutants are being implemented at the State and local levels. The Association of Local Air Pollution Control Officials, as well as STAPPA, has recently completed a survey which we would also like to submit for the record.

Senator STAFFORD. Without objection, we will incorporate it in the record by reference: "Toxic Air Pollutants: State and Local Regulatory Strategies," January 1984.

Mr. ARKELL. Your staff has been supplied with copies of this, Mr. Chairman.

Under a proposal that we are currently working on, we are suggesting a stronger commitment from the Federal Government in the area of technical assistance to provide research and risk-assessment data that can be used immediately by State and local agencies. We believe that the Air Toxics Clearinghouse, mentioned earlier, will help fill that need, and we urge continuing support for it.

ALAPCO believes that local and State air agencies can assist EPA and Congress in controlling air toxics. We believe that programs have

become mature to the point where we can be an effective tool in regulating toxic air pollutants.

With respect to noncompliance penalties, ALAPCO believes that these penalties can be an effective enforcement mechanism. Many local agencies use the penalty mechanism to enforce their rules. The Federal system, however, is very complex, and currently unworkable. We would suggest that there be several steps taken to simplify this system so that it might be used more easily by State and local agencies.

We think that the system should be mandatory, with a few exceptions. Second, the method for calculating penalties should be simplified. We suggest either an excess emission fee or a prescribed daily penalty. We think that the ceiling should be eliminated. And lastly, all sources violating sections of 112 should be subject to the penalty.

On deadlines and sanctions, like STAPPA, we do not oppose sanctions. We find them a useful tool in bringing about the necessary measures that are needed to attain ambient air quality standards. We support the bill's intent to extend the deadlines for attaining ambient air quality standards. One of our largest members, the South Coast Air Quality Management District, will not be able to attain the ozone standard until well beyond even the deadlines contained in the bill.

When areas fail to meet appropriate deadlines and are not implementing the controls required of them, we beleive that sanctions should be imposed. We also support the bill's intent to give the administrator some discretion to tailor the magnitude of those sanctions to the nature of the violation.

ALAPCO strongly recommends that the current Federal motor vehicle control program be retained. Many of the gains that have been made in cleaning up the air in urban areas is attributed to the Federal new auto emission standards. In those areas where inspection and maintenance programs are required, the Federal motor vehicle emission standards are a necessary starting point from which to administer an effective inspection and maintenance program.

If I might depart just briefly, Mr. Chairman, Senator Mitchell earlier mentioned his bill to prohibit the sale and manufacture of defeat devices. The Association of Local Air Pollution Control Officials considered that bill at a meeting several months ago, and supports the essential elements of that bill.

I, too, would like to alert the committee to the funding crisis that some local air pollution programs are facing. As Federal and State resources have been cut, so have local sources of revenue. We are required under the delegation procedure that is inherent in the act to take on additional responsibilities. Several local agencies have shut down over the past 3 years due to a lack of resources. A survey recently conducted indicates that if a significant reduction of Federal grant money comes about, more agencies will be closed down. We hope the committee will continue to work toward insuring that local agencies receive sufficient funds to meet the Federal mandate under the Clean Air Act.

I, too, will be happy to answer any questions.

Senator STAFFORD. Thank you both very much. In view of our time constraints, the chairman and the members of the committee may have some questions we will send to you for a response at your earliest convenience in writing.

That being the case, we will forgo oral questions at this time, and on behalf of the committee, I want to express our appreciation to you both for having traveled long distances to be here with us this morning. We appreciate it very much indeed. The committee is adjourned.

[Whereupon, at 12:05 p.m., the committee recessed, to reconvene at the call of the Chair.]

[Statements submitted for the record follow:]

STATEMENT OF
JOSEPH A. CANNON
ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

FEBRUARY 24, 1984

Mr. Chairman and Members of the Committee. My name is Joseph Cannon. I am Assistant Administrator for Air and Radiation of the U.S. Environmental Protection Agency. I am delighted to have the opportunity to testify today on reauthorization of the Clean Air Act.

The Clean Air Act is an important and valuable piece of legislation. But, like any complex statute, it needs to be refined in light of changed circumstances and experience gained in its implementation. Only in that way can it be made an even better environmental protection statute, one geared towards meeting the problems of the 1980's and 1990's. Congress has amended the Clean Air Act in the past to reflect changing circumstances, and S. 768 represents your latest effort to improve it.

I would like both to comment on some aspects of S. 768 and to discuss with you some additional areas that we think will make the Act more appropriate to the air pollution problems we confront today.

The situation we face now is very different from when the first major amendments were enacted in 1970 and even in 1977. Then we

WERE CONCERNED ABOUT CLEANING UP DIRTY AREAS NATIONWIDE. NOW, ALTHOUGH WE ARE WORRIED ABOUT CERTAIN INTRACTABLE NONATTAINMENT AREAS, MOST OF THE COUNTRY IS IN ATTAINMENT OR MAKING REAL PROGRESS TOWARDS IT.

IN THE 1970'S, STATES NEEDEL HELP IN FORMULATING AND CARRYING OUT THEIR PROGRAMS. NOW THERE ARE MANY VERY COMPETENT AND INCREASINGLY KNOWLEDGEABLE STATE AND LOCAL AGENCIES WITH PROGRAMS THAT HAVE BECOME INSTITUTIONALIZED.

IN THE 1970'S, WE THOUGHT WE COULD IDENTIFY ONE SAFE LEVEL FOR TOXIC AND CRITERIA POLLUTANTS. NOW WE KNOW THAT THE SITUATION IS FAR MORE COMPLICATED THAN THAT FOR THE POLLUTANTS WE HAVE ADDRESSED AND THOSE WE HAVE YET TO ADDRESS.

I BELIEVE THAT AS WE MOVE INTO THE MIDDLE OF THE 1980'S THE CLEAN AIR ACT SHOULD REFLECT THESE CHANGES AND OPERATE MORE FLEXIBLY AND MORE APPROPRIATELY TO THE REAL PROBLEMS WE FACE CURRENTLY.

THEREFORE, MY COMMENTS ON YOUR BILL WILL REFLECT TWO BASIC THEMES THAT UNIFY OUR CURRENT THINKING. THE FIRST IS DECOUPLING RISK ASSESSMENT FROM RISK MANAGEMENT, A TOPIC ADMINISTRATOR RUCKELSHAUS HAS DISCUSSED BEFORE, AND ONE TO WHICH I WILL RETURN SHORTLY. A SECOND THEME IS THAT, GIVEN THE INCREASED EXPERIENCE OF THE STATES, WE SHOULD RELY MORE ON THEIR KNOWLEDGE AND JUDGMENT. WE FULLY RECOGNIZE THAT THERE ARE A NUMBER OF POSSIBLE APPROACHES TO THE CONCERNS I WILL DISCUSS TODAY, AND WE ARE NOT WEDDED TO THE DETAILS OF ANY PARTICULAR APPROACH. WE LOOK FORWARD TO WORKING WITH YOU AND YOUR STAFF TO PRODUCE THE BEST POSSIBLE CLEAN AIR ACT.

THE PROCESS OF SETTING AMBIENT AIR QUALITY STANDARDS AND MEETING THE DEADLINES FOR ATTAINING THEM SHOWS THE NEED FOR EXPLICIT SEPARATION OF RISK ASSESSMENT FROM RISK MANAGEMENT. UNDER THE STATUTE, WE SET PRIMARY AIR QUALITY STANDARDS BASED SOLELY ON EVIDENCE CONCERNING PUBLIC HEALTH WITHOUT CONSIDERING THE COSTS OR OTHER IMPACTS OF ATTAINING THOSE STANDARDS.

THE STANDARDS, HOWEVER, MUST THEN BE ATTAINED BY FIXED DEADLINES. IT IS IN THIS RISK MANAGEMENT PHASE THAT WE ENCOUNTER IMPLEMENTATION PROBLEMS. NOWHERE DOES THE STATUTE EXPLICITLY PROVIDE FOR CONSIDERATION OF THE ECONOMIC OR OTHER IMPACTS OF ATTAINING A GIVEN STANDARD BY THE DEADLINE. PRUDENT PUBLIC POLICY DEMANDS THAT THOSE CHARGED WITH ACHIEVING A GOAL BE GIVEN THE DISCRETION TO EVALUATE FACTORS RELEVANT TO ACHIEVING THAT GOAL. HISTORICALLY, THE STATUTE HAS BEEN READ TO PROVIDE THIS NECESSARY FLEXIBILITY. THE LAW SHOULD EXPLICITLY PROVIDE THIS DISCRETION.

CONGRESS HAS RECOGNIZED THE PROBLEMS WITH THESE DEADLINES IN THE PAST BY EXTENDING THEM. THE PROBLEM, HOWEVER, IS NOT WITH THE PARTICULAR DATES CHOSEN, BUT WITH THE INFLEXIBLE NATURE OF THE APPROACH. WE ARE NOT REPUDIATING THE CONCEPT OF DEADLINES. INDEED, WE ARE IN THE POST-DEADLINE PERIOD RIGHT NOW, AND OUR POLICY CONTINUES TO MAKE USE OF DEADLINES FOR MOST AREAS. BUT IN SOME AREAS DEADLINES ARE SIMPLY UNATTAINABLE. THE LOS ANGELES REGION, FOR EXAMPLE, IS CLEARLY NOT GOING TO BE ABLE TO MEET THE 1987 OZONE STANDARD. IN THOSE AREAS, WE HAVE REQUIRED STATES TO ADOPT SPECIFIC MEASURES RATHER THAN MEET DEADLINES. FOR THAT TYPE OF

SITUATION, WE THINK IT IS APPROPRIATE TO EXPECT VERY STRICT BUT REALISTIC AND ENFORCEABLE MEASURES TO BE SUBMITTED AND ADHERED TO AS A QUID PRO QUO FOR FLEXIBILITY IN THE DEADLINE. THE EXISTENCE OF A DEADLINE THAT CANNOT REALISTICALLY BE MET PLACES US IN AN AWKWARD SITUATION OF BEING UNABLE TO GIVE FULL APPROVAL TO AN AREA THAT HAS DONE EVERYTHING IT REASONABLY CAN TO MEET THE STANDARDS. THIS UNDERMINES THE INTEGRITY OF THE LAW. WE WANT TO ENSURE REAL MOVEMENT TOWARDS THE STANDARD, AND WE WOULD RECOMMEND THAT THIS APPROACH BE ADOPTED IN AMENDING THE ACT.

AND, WHILE ON THE SUBJECT OF DEADLINES, WE FULLY SUPPORT THOSE PROVISIONS OF S. 768 THAT EXPLICITLY GRANT THE ADMINISTRATOR DISCRETION IN DETERMINING WHETHER OR NOT TO IMPOSE SANCTIONS UPON AREAS THAT HAVE NOT ATTAINED THE STANDARDS ON TIME.

WE ALSO AGREE THAT ANY EXTENSION OF DEADLINES SHOULD BE COUPLED WITH APPROPRIATE ANTI-BACKSLIDING PROVISIONS TO ENSURE THAT PROGRESS ALREADY MADE IS NOT LOST.

A SECOND AREA IN WHICH THE CURRENT ACT AND S. 768 COULD BETTER REFLECT THE PROBLEMS WE FACE IS IN REGULATING HAZARDOUS AIR POLLUTION UNDER SECTION 112. AS YOU KNOW, THE ADMINISTRATOR TESTIFIED LAST FALL ON THIS MATTER BEFORE THE HOUSE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, WHERE HE DESCRIBED MANY OF THE PROBLEMS WITH THIS PROGRAM. I WOULD LIKE TO SUBMIT HIS TESTIMONY FOR THE RECORD. SOME OF THE DIFFICULTIES WERE DUE TO MANAGEMENT PROBLEMS WE ARE NOW CORRECTING AND OTHERS RESULT FROM THE WAY THE STATUTE IS NOW WRITTEN. WHEN WE TESTIFIED BEFORE MR. DINGELL'S SUBCOMMITTEE, WE WERE IN THE UNCOMFORTABLE SITUATION OF HAVING TO

CONCENTRATE ON EPA'S PERFORMANCE IN THIS AREA, TOUCHING ONLY LIGHTLY ON THE STATUTE ITSELF. I WOULD LIKE HERE TO EXPAND ON THE QUESTION OF HOW SECTION 112 COULD BE MADE A BETTER TOOL TO DEAL WITH HAZARDOUS AIR POLLUTANTS.

SECTION 112 OF THE CLEAN AIR ACT IS THE PRIMARY INSTRUMENT GIVEN US TO REGULATE TOXIC AIR POLLUTANTS. IT REQUIRES THE ADMINISTRATOR TO "LIST" AIR POLLUTANTS WHICH IN HIS JUDGMENT "MAY REASONABLY BE ANTICIPATED TO RESULT IN AN INCREASE IN MORTALITY OR AN INCREASE IN SERIOUS IRREVERSIBLE, OR INCAPACITATING REVERSIBLE, ILLNESS". AFTER LISTING A POLLUTANT, THE ADMINISTRATOR MUST ESTABLISH AN "EMISSION STANDARD" FOR IT WITHIN ONE YEAR. THIS EMISSION STANDARD MUST BE TIGHT ENOUGH TO "PROTECT THE PUBLIC HEALTH" WITH "AN AMPLE MARGIN OF SAFETY".

WE HAVE HAD A NUMBER OF DIFFICULTIES APPLYING THIS LANGUAGE TO THE SITUATIONS WE ENCOUNTER.

FOR EXAMPLE, WHERE CANCER-CAUSING SUBSTANCES ARE CONCERNED, OUR BEST CURRENT SCIENTIFIC KNOWLEDGE LEADS US TO PRESUME THAT ANY LEVEL OF THAT SUBSTANCE POSES SOME RISK OF CANCER, EVEN THOUGH AT VERY LOW EXPOSURE LEVELS THAT RISK WILL BE VERY LOW. THE PRESENT LANGUAGE OF SECTION 112 CAN BE READ TO REQUIRE THE ADMINISTRATOR TO DRIVE RISKS DOWN TO THE VANISHING POINT WITHOUT CONSIDERATION OF ANY OTHER FACTOR. FOR CARCINOGENS, THIS APPROACH MIGHT LEAD TO A VIRTUAL BAN ON MANY MAJOR INDUSTRIAL CHEMICALS AND ACCOMPANYING ECONOMIC DISRUPTION. IN FACT, THE GENERAL ACCOUNTING OFFICE IN A RECENT REPORT STATED THAT THIS WAS THE CLEAR MEANING OF THE STATUTE.

WE HAVE ASSUMED THAT CONGRESS DID NOT INTEND THIS RESULT.

WE HAVE, THEREFORE, IN IMPLEMENTING SECTION 112, MADE JUDGMENTS ABOUT SAFETY AND ABOUT THE APPROPRIATE LEVEL OF RISK. IT DOES NOT MAKE SENSE TO REGULATE WITHOUT CONSIDERING SUCH FACTORS AS THE MAGNITUDE AND EXTENT OF THE RISKS INVOLVED, THE CERTAINTY WITH WHICH THE RISKS ARE ESTABLISHED, OTHER ADVERSE ENVIRONMENTAL EFFECTS OF THE EMISSIONS, AND OTHER CONSEQUENCES OF CONTROLS TO REDUCE THOSE RISKS. THE FACT IS THAT NOT ALL HAZARDOUS AIR PROBLEMS ARE EQUALLY GRAVE. SOME CHEMICALS ARE MORE DANGEROUS THAN OTHERS. SOME ARE MORE WIDESPREAD. SOMETIMES THE BULK OF THE POLLUTION COMES FROM LARGE INDUSTRIAL STACKS AND IS AMENABLE TO CONTROL WITH NATIONAL LIMITS AND SOMETIMES IT COMES FROM THOUSANDS OF SMALL INDUSTRIAL, COMMERCIAL AND EVEN RESIDENTIAL SOURCES THAT ARE EXTREMELY DIFFICULT TO CONTROL. YET THE STATUTE PROVIDES NO CLEAR DIRECTION ON WHETHER AND HOW TO DIFFERENTIATE THESE SITUATIONS.

COMMON SENSE SUGGESTS THAT THE SOLUTIONS TO THESE PROBLEMS SHOULD AT A MINIMUM BE AFFECTED BY THE SIZE OF THE HEALTH PROBLEMS THEY ARE AIMED AT.

WE BELIEVE THAT WHERE WE HAVE MADE REGULATORY DECISIONS, WE ARE IN ACCORD WITH CONGRESS'S INTENT AND THAT THE FLEXIBILITY TO CONSIDER ALL RELEVANT INFORMATION IS AN ESSENTIAL PART OF EPA'S ABILITY TO CARRY OUT ITS MISSION. IF WE ARE CORRECT, THEN CONGRESS SHOULD MOVE TO MAKE SUCH BALANCING EXPLICIT IN THE LANGUAGE OF THE ACT.

S. 768 CONTAINS AN AUTOMATIC LISTING PROVISION. THOUGH I UNDERSTAND WHY THIS MIGHT SEEM ATTRACTIVE, I THINK WE CANNOT

SIMPLY WISH AWAY THE SUBSTANTIAL SCIENTIFIC UNCERTAINTY WE MUST FACE AND RESOLVE IN ORDER TO MAKE RESPONSIBLE DECISIONS HERE.

ANOTHER SERIOUS CONSEQUENCE OF AUTOMATIC LISTING WOULD BE TO MISDIRECT OUR CONTROL EFFORTS AWAY FROM MORE SERIOUS HAZARDOUS AIR POLLUTION PROBLEMS. FORCING EPA TO CONSIDER LISTING, ON AN ACCELERATED BASIS, A LARGE NUMBER OF INDUSTRIAL POINT SOURCE CATEGORIES WOULD FORCE US TO BUDGET MANY OF OUR EFFORTS PRECISELY WHERE OUR BEST AVAILABLE INFORMATION SUGGESTS THE PAYOFF FOR PUBLIC HEALTH MAY BE RELATIVELY SMALL.

THAT IS BECAUSE MANY OF THE MORE SERIOUS AIR TOXICS PROBLEMS IN THIS COUNTRY APPEAR, BASED ON OUR ONGOING STUDIES, TO BE LOCALIZED PROBLEMS. THEY ARE PROBLEMS, BY AND LARGE, IN WHICH MIXTURES OF CHEMICALS ARISE FROM NUMEROUS SMALL SOURCES, FROM WASTE DUMPS, AND FROM SEWAGE PLANTS HEAVILY USED BY INDUSTRY, TO AFFECT THE IMMEDIATELY SURROUNDING POPULATION. OFTEN WHERE THE CULPRIT IS A LARGE INDUSTRIAL SOURCE, WE FIND THERE ARE ONLY A FEW OTHERS LIKE IT ACROSS THE COUNTRY.

CONSEQUENTLY, WE ARE OPPOSED TO ANY AMENDMENT REQUIRING THE AUTOMATIC LISTING OF POLLUTANTS IF EPA FAILS TO REACH A CONCLUSION WITHIN A FIXED PERIOD OF TIME. IT DOES NOT SEEM SENSIBLE TO DECLARE A SUBSTANCE "HAZARDOUS," DIVORCED FROM THE MERITS OF THE SCIENCE, SIMPLY BECAUSE EPA MISSES A DEADLINE. IN ADDITION TO WEAKENING THE CREDIBILITY OF OUR DECISIONS, AUTOMATIC LISTING COULD RESULT IN THE IMPOSITION OF STRINGENT AND COSTLY REGULATIONS WITH NO ADEQUATE BASIS. OR IT COULD HAVE THE PERVERSE EFFECT OF MAKING THE AGENCY ACT PRECIPITOUSLY IN SOME CASES TO MAKE A DECISION NOT TO LIST A SUBSTANCE WITHOUT ADEQUATE SUPPORT.

We understand Congress's impatience and unhappiness with the slow course of EPA's implementation of this section of the Act. But we believe there are other better ways to facilitate decision-making and to hold EPA accountable.

We also would like to explore with you ways in which the Act could reflect the appropriate roles of both the EPA and the state agencies. At a minimum, they need technical help and scientific expertise, and we want to provide that assistance.

Section 112 at present seems to imply that virtually all hazardous air pollution is best handled by EPA's writing federal, uniformly applicable emission standards, one chemical at a time. By its silence it suggests the States and cities have no role in this mission. It ignores the programs that exist already in many States for dealing with air toxics. We suggest that the statute should reflect the complex and varying types of hazardous air pollution problems throughout the country, which most appropriately calls for coordination between State and Federal entities.

The current Act also appears to tell us to decide whether to regulate <u>all sources</u> of a listed pollutant within one year. This requirement has slowed down, not speeded up, the listing process. If we are unsure about whether one source category should be regulated, the listing decision and all regulatory decisions are delayed for all categories. The process is designed to be as slow as its slowest part. The Act should reflect the fact that it may be easier to decide that a substance is hazardous than to decide how best to control all of its sources.

From what I have said, I hope you can see that the current Act may be asking us to act too quickly to address too little of the problem. Nor do any of the proposed amendments that I have seen to section 112 deal with this fundamental issue. Rather they look solely to our bureaucratic ineptitude as a scapegoat. The maxim "to every problem there's a simple solution -- and it's usually wrong" is especially appropriate in this case. These amendments are more likely to make matters worse than to make them better.

Turning to another theme of my remarks, we recognize that the States have become increasingly sophisticated in their air pollution control efforts. Virtually all have undertaken substantial air quality improvement programs and have accepted a significant degree of delegation of program responsibility from EPA. Indeed, the States, taken as a whole, now have a significantly larger enforcement staff than the EPA and have started to take promising initiatives in cooperation with EPA.

We should recognize and encourage delegation of routine responsibilities for pollution control. We should give the States increased flexibility to tailor their efforts to local needs. EPA should focus on agency review of the overall state program and its major constituent parts rather than on day-to-day decisions.

ACCORDINGLY, IN CONJUNCTION WITH STAPPA AND ALAPCO, WE HAVE DEVELOPED A NATIONAL AUDIT PROGRAM FOR STATE AGENCIES. THROUGH SUCH AN APPROACH, WE HOPE TO BUILD ON THE SIGNIFICANT PROGRESS THAT HAS BEEN MADE BY THE STATES AND TO FIND WAYS TO FURTHER IMPROVE ESTABLISHED STATE PROGRAMS. THIS WILL PROVIDE A GREATER ROLE FOR THE STATES, A MORE EFFICIENT MECHANISM FOR OVERVIEW AND GREATER ENVIRONMENTAL IMPROVEMENT THAN PIECEMEAL REVIEW OF DISCRETE STATE ACTIONS.

IN KEEPING WITH THIS GOAL, WE FAVOR THE DEVELOPMENT OF ADDITIONAL MECHANISMS BY WHICH FULLY APPROVED STATE PROGRAMS CAN ELIMINATE THE NEED FOR EPA REVIEW OF INDIVIDUAL ACTIONS. THUS, WE ENDORSE THE S. 768 STATE OPERATING PERMIT PROGRAM. SUCH AN APPROACH, COUPLED WITH AN EFFECTIVE AUDIT PROGRAM, PROVIDES FOR AN APPROPRIATE DIVISION OF RESPONSIBLITY BETWEEN THE STATES AND EPA, AND WILL YIELD SIGNIFICANT ENVIRONMENTAL BENEFITS.

HOWEVER, SINCE EPA'S REVIEW UNDER SUCH AN APPROACH WOULD FOCUS ON MAJOR ELEMENTS OF THE STATES' PLANS, WE FEEL THAT MORE REALISTIC DEADLINES FOR AGENCY ACTION SHOULD BE ESTABLISHED. GIVEN THE COMPLICATED NATURE OF THE PROVISIONS TO BE REVIEWED, FOUR TO SIX MONTHS IS SIMPLY NOT ENOUGH TIME TO CONDUCT AN ADEQUATE REVIEW.

WE ARE NOT SUGGESTING THAT WE MOVE BACK TO THE DAYS WHEN THE FEDERAL GOVERNMENT HAD ONLY AN ADVISORY ROLE AND 50 STATES HAD 50 DIFFERENT POLLUTION CONTROL POLICIES. RATHER WE ARE SUGGESTING THAT THE STATUTE SHOULD REFLECT THE FACT THAT THE JOB OF DEALING WITH THE COMPLEX TYPES OF AIR POLLUTION CONTROL PROBLEMS THROUGHOUT

THE COUNTRY REQUIRES A CONCERTED AND WELL-COORDINATED EFFORT OF STATE AND FEDERAL ACTIVITY.

I WOULD NOW LIKE TO DISCUSS BRIEFLY WITH YOU THE ACT'S "PREVENTION OF SIGNIFICANT DETERIORATION" (PSD) PROVISIONS FOR PROTECTION OF AIR QUALITY IN THOSE AREAS CURRENTLY IN ATTAINMENT. AS MORE AREAS ATTAIN STANDARDS, THIS PROGRAM WILL HELP ASSURE US THAT THEY REMAIN IN ATTAINMENT, AND WE MAY FIND THAT ITS PROVISIONS HAVE CONCOMITANTLY GREATER IMPACT AS THE ECONOMY CONTINUES TO RECOVER AND GROWTH OCCURS.

THE PRESENT PSD SYSTEM WAS CREATED BY EPA IN RESPONSE TO A COURT ORDER AND WITHOUT DETAILED CONGRESSIONAL DEBATE. IN 1977, CONGRESS RATIFIED EPA'S BASIC APPROACH. WE SHOULD BEGIN NOW TO SCRUTINIZE THE PROGRAM TO MAKE SURE THAT ITS GOALS OF PROTECTING AREAS NOW MEETING AMBIENT STANDARDS, AND PARTICULARLY NATIONAL PARKS, ARE BEING ACHIEVED EFFICIENTLY, EFFECTIVELY, AND EQUITABLY.

THE ADMINISTRATOR HAS REQUESTED AN EXAMINATION OF THE PSD SYSTEM FROM THE GROUND UP, TO EVALUATE HOW WELL IT SERVES ITS PURPOSES, AND SUGGEST APPROPRIATE CHANGES. WE EXPECT THE RESULTS BY THIS FALL, AND I HOPE THAT THEY WILL LEAD TO A BASIC AND THOROUGH REEXAMINATION OF THE PSD PROGRAM AT THAT TIME. HOWEVER, WE MUST BEGIN TO LAY THE FOUNDATION NOW BY STREAMLINING THE CURRENT SYSTEM. I BELIEVE THAT S. 768 TAKES APPROPRIATE STEPS IN THIS DIRECTION, AND I WOULD LIKE TO DISCUSS ONLY TWO OF ITS PROPOSED CHANGES FURTHER WITH YOU TODAY.

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S. 768, LIKE THE CURRENT LAW, MAKES THE CLASS II INCREMENTS PRESUMPTIVELY APPLICABLE EVERYWHERE EXCEPT IN NATIONAL PARKS AND SIMILAR AREAS. IT ALSO GIVES THE STATES THE FREEDOM TO DECIDE THAT THESE REQUIREMENTS SHOULD NOT APPLY IN CERTAIN AREAS. HOWEVER, S. 768 SEEMS TO REQUIRE STATES TO MAKE THIS CHOICE WITHIN A VERY NARROW "WINDOW" OF TIME OR LOSE THE AUTHORITY TO MAKE IT. IN OUR VIEW, SUCH A RESTRICTION ON STATE DISCRETION IS INCONSISTENT WITH GRANTING THAT DISCRETION IN THE FIRST PLACE. WE RECOMMEND THAT NO TIME LIMIT BE IMPOSED TO STATE RECLASSIFICATION OF CLASS II AREAS.

WE ALSO HAVE RESERVATIONS ABOUT THE COMMITTEE BILL'S APPROACHES TO CONTROL TECHNOLOGY REQUIREMENTS IN THE PSD PROGRAM. WE ARE CONCERNED THAT THESE REQUIREMENTS ARE LIKELY TO INCREASE THE ADMINISTRATIVE BURDENS BUT HAVE LITTLE OR NO PRACTICAL EFFECT IN TERMS OF HEALTH OR WELFARE RELATIVE TO THE CURRENT BACT REQUIREMENT. WE WOULD BE HAPPY TO DISCUSS OUR CONCERNS WITH YOUR STAFF.

WE ALSO HAVE SEVERAL PROPOSALS DEALING WITH MOBILE SOURCE CONTROL. WE SUPPORT CHANGES DESIGNED TO ENSURE THAT VEHICLES MEET EMISSION STANDARDS IN ACTUAL USE AND THAT OUR NATIONAL INVESTMENT IN EMISSION CONTROLS CONTINUES TO PAY OFF.

WE HAVE MADE GREAT STRIDES IN REDUCING AUTO EMISSIONS, WITH NEW CAR STANDARDS REPRESENTING A 95% REDUCTION IN HYDROCARBONS EMISSIONS, A 96% REDUCTION IN CARBON MONOXIDE EMISSIONS, AND A 76% REDUCTION IN NO_x EMISSIONS FROM UNCONTROLLED LEVELS. AS A RESULT OF RESTRICTIONS ON LEAD IN GASOLINE AND DECREASED USE OF LEADED GASOLINE, WE HAVE SEEN A DRAMATIC DROP IN THE BLOOD LEAD

LEVELS OF YOUNG CHILDREN. YET SOME OF THESE GAINS MAY BE JEOPARDIZED BY FUEL SWITCHING AND TAMPERING WITH AUTO EMISSIONS DEVICES. THIS IS A SERIOUS PROBLEM. FUEL SWITCHING IS NOW CALCULATED TO BE OCCURRING IN ABOUT 13% OF THE AUTO FLEET. IT QUICKLY DESTROYS CATALYTIC CONVERTERS AND INCREASES INDIVIDUAL AUTO EMISSIONS AS MUCH AS 800%. WE PROPOSE A NUMBER OF STEPS AIMED AT THIS PROBLEM.

FIRST, THE ACT SHOULD BE CHANGED TO MAKE IT ILLEGAL TO SELL "DEFEAT DEVICES" DESIGNED TO DISABLE EMISSION CONTROL SYSTEMS. AT PRESENT, ONLY THE ACTUAL INSTALLATION OF SUCH A DEVICE BY DEALERS AND SERVICE STATIONS IS CLEARLY ILLEGAL.

CURRENT LAW DOES NOT FORBID AN INDIVIDUAL VEHICLE OWNER FROM USING THE WRONG FUEL OR DISABLING HIS OWN CAR'S EMISSION CONTROLS. WE BELIEVE THAT THESE LOOPHOLES SHOULD BE ELIMINATED. THE INDIVIDUAL WHO DISABLES HIS CAR'S EMISSION CONTROL SYSTEM OR USING THE WRONG FUEL MIGHT JUST AS WELL EMPTY BAGS OF POLLUTANTS INTO THE AIR AND THIS SHOULD NOT BE PERMITTED.

ANOTHER PROBLEM IS THAT CURRENT LAW REQUIRES THAT ALL CASES INVOLVING VEHICLE EMISSION CONTROL "TAMPERING" OR USE OF THE WRONG FUEL BE BROUGHT IN FEDERAL COURT. THIS HAMPERS ENFORCEMENT AS THESE ARE ESSENTIALLY MINOR CASES, COMPARABLE TO TRAFFIC OFFENSES, TO WHICH PROSECUTORS AND JUDGES ARE UNDERSTANDABLY RELUCTANT TO GIVE MUCH PRIORITY. WE BELIEVE THAT MOST CASES SHOULD BE HEARD BEFORE ADMINISTRATIVE LAW JUDGES.

I WOULD LIKE TO JUST BRIEFLY COMMENT ON A NUMBER OF OTHER AREAS. WE OPPOSE THE PROVISIONS OF S. 768 THAT WOULD REQUIRE A "DUAL DEFINITION" OF SOURCES FOR NONATTAINMENT PROGRAMS. AS YOU KNOW, WE HAVE APPEALED TO THE SUPREME COURT A LOWER COURT DECISION

REQUIRING THE USE OF DUAL DEFINITION, AND WE CONTINUE TO BELIEVE THAT THE LAW SHOULD NOT REQUIRE IT.

In addition, the control technology requirement for new source review in nonattainment areas appears to us to be no simpler than the current requirement although it is renamed BACT. As I said regarding our PSD control technology concerns, we do not think that the added administrative burden is likely to result in any significant emission reductions.

Finally, some technical problems in enforcement of the Clean Air Act have surfaced. We think they call for fine tuning. For example, the Act provides both that EPA may require businesses to keep certain records and that the Agency may examine and inspect business records. One court recently held that the Agency can inspect only those records it required to be kept in the first place. We think the decision is wrong and recommend that the Act be amended to clarify our authority in this area. Similarly, in certain areas the Act could possibly be read to allow an operator to wait years, and then after an enforcement proceeding has already been started in Federal district court, to file a duplicative proceeding in circuit court challenging the order underlying the enforcement action. This opportunity for delay should be eliminated. There are a number of other such problems with which I do not wish to take the Committee's time now. I will submit them for the record, and we will be happy to work on them with your staff.

LET ME STRESS THAT WE SHARE THE COMMON GOAL OF PRODUCING THE BEST PIECE OF LEGISLATION TO FURTHER OUR GREATER SHARED GOAL OF PROTECTING OUR NATION'S AIR. THE QUESTIONS WE ARE RAISING TODAY INVOLVE HOW WE GET THERE -- NOT WHETHER WE TAKE THE ROAD. WE LOOK FORWARD TO CONTINUE WORKING WITH YOU ON THIS CRITICAL TASK.

I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Statement of
William D. Ruckelshaus
Administrator
U.S. Environmental Protection Agency
Before the
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S House of Representatives

November 7, 1983

Good morning, Mr. Chairman and Members of the Subcommittee. I am William D. Ruckelshaus, Administrator of the U.S. Environmental Protection Agency. I am pleased to be here today to discuss with you the problem of hazardous air pollutants, the current Clean Air Act provisions intended to address that problem, and EPA's experience in implementing these provisions. I would also like to discuss some special problems we have experienced implementing our program and present a number of changes for the Congress to consider as it reviews these provisions for possible amendment.

I. Nature of the Toxic Air Pollutant Problem

Toxic air pollution is of great concern to EPA, the Congress, and the public. The Congress indicated its concern when it included section 112 in the Clean Air Act. EPA has been dealing with this problem as well as reviewing the direction in which our efforts are currently headed.

On the basis of what we know now, what is the nature and extent of the health risk posed by hazardous air pollutants? To begin with, we are speaking primarily about the risk from cancer. While exposure to hazardous air pollutants may be associated with other, non-cancer health effects, our attention most often focusses on cancer because there is evidence that some risk may be associated with even very low levels of exposure. We can certainly identify

other chronic health effects which may be associated with hazardous air pollutants, but the associated risk at very low ambient levels of exposure is often less certain. Therefore, there is no question that cancer is the most important reason for our concern about the substances which section 112 addresses. Cancer accounts for about one fifth of all deaths in this country and the possibility of obtaining reductions in that immense toll establishes a firm base of public support for some program to control airborne carcinogens.

Risk assesments have been used to set standards for such important known human carcinogens as asbestos and vinyl chloride. We can also use it to make estimates about what sort of health protection benefits we might expect if we removed some substance from the air. Often, when we have done this, we have obtained results that give us some pause. Often, these analyses indicate that the impact on public health of regulating under section 112 is relatively low. For example, a very preliminary evaluation of the pollutants now under consideration using available estimates of risk and exposure suggests annual excess cancer cases from the release of these pollutants from industrial point sources is probably in the neighborhood of a few hundred rather than thousands.

To properly characterize the risks posed by ambient exposures to potentially hazardous air pollutants, we must understand the health effects associated with exposure, the level of exposure, and the number of people exposed. Our knowledge of the potential health effects arising from low level exposure to such pollutants is very limited and generally must be based on extrapolations from relatively high levels of exposure associated with either animal

tests or work-place measurements. Ambient exposures are almost always much lower. We are not likely to have data which directly demonstrate increased mortality or health risk due to actual ambient exposures to individual chemicals.

Most exposure to potentially hazardous pollutants is largely localized and depends on factors such as the amount of emissions from individual sources or groups of sources and the proximity of the source(s) to populated areas. Numerous risk assessments conducted for specific substances suggest elevated risk for a relatively small number of persons living or working near particular sources. These assessments would seem to indicate that, for major industrial sources at least, while we may be dealing with substances which pose a particular local risk, they may not pose a large risk when viewed against the nation's population as a whole.

II. Current Statutory Authority to Deal With Toxic Air Pollutants

The Clean Air Act requires EPA to identify and regulate air pollutants that adversely affect public health. Title I of the statute provides three main ways for dealing with emissions of air pollutants from stationary sources. These are (1) setting national ambient air quality standards and implementation of strategies for their attainment, (2) establishing new source performance standards and the corresponding State requirements for existing sources, or (3) establishing national emission standards for hazardous air pollutants.

A. National Ambient Air Quality Standards

The Statute directs EPA to list the pollutant under section 108, set national ambient air quality standards under section 109, and require States to control sources through State Implementation Plans under section 110. Pollutants regulated through this

mechanism are those which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare". National primary ambient air quality standards shall be set by the Administrator to protect public health with an "adequate margin of safety." The pollutants regulated by national ambient air quality standards are sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead.

B. New Source Performance Standards

Choosing this route requires EPA to establish new source performance standards (NSPS) under section 111 for specific categories of new or modified sources which "cause[ ], or contribute[ ] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." Most, but not all, NSPS are for pollutants subject to ambient air standards. Where an NSPS regulates a pollutant not subject to an ambient air standard or not designated as a hazardous pollutant, section 111(d) requires States to regulate existing sources (of the type covered by the NSPS) emitting that pollutant. These existing source regulations, like NSPS's, are performance standards that reflect demonstrated control techniques.

C. Hazardous Air Pollutant Standards

Congress included section 112 in the Clean Air Act specifically for dealing with toxic air pollutants. Steps under section 112 include listing the pollutant as hazardous and establishing national emission standards for both new and existing sources of that pollutant. Pollutants regulated under section 112 are those which "cause[ ], or contribute[ ] to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness." The emission standards (or NESHAPS) established by EPA

are required to protect the public health with an "ample margin of safety."

EPA enforces and implements these standards, although States may, and usually do, obtain delegation of enforcement and implementation. The section does not include explicit economic or technology tests to be used in standard setting as does Section 111.

III. EPA Implementation of the Statutory Requirements

A. Past Actions

To date, seven substances have been listed as hazardous air pollutants under section 112. Asbestos, beryllium, and mercury were listed in early 1971 and initially regulated in 1973. Vinyl chloride was listed in 1975 and regulations were promulgated in 1976. Benzene was listed in 1977 and regulations were proposed in 1980 and early 1981. Radionuclides were listed in 1979 and regulations were proposed in April of this year. Arsenic was listed in 1980 and regulations were proposed in July of this year. Regulations have been promulgated for three noncriteria pollutants under section 111 (sulfuric acid mist, fluorides, and total reduced sulfur) and have been proposed for five degreasing solvents. Table I details the regulatory status for these pollutants.

B. The Current Regulatory Program

Over the next two years, the Agency plans to announce decisions on the need for regulation regarding the following pollutants: polycyclic organic matter, nickel, toluene, coke oven emissions, acrylonitrile, carbon tetrachloride, perchloroethylene, trichloroethylene, methyl chloroform, methylene chloride, CFC-113, manganese, chromium, cadmium, chlorobenzenes, dioxin, vinylidene chloride, epichlorohydrin, chloroform, hexachlorocyclopentadiene, ethylene

oxide, and ethylene dichloride. We plan to begin comprehensive health assessment documents on an additional 8-10 new pollutants in FY84, with announcements on the need to regulate those pollutants anticipated in FY86. Several of these new comprehensive health assessment documents will be for pollutants not currently on the list of approximately 40 substances upon which the Agency has focused its efforts recently. The steps which led to that list are described below. Several pollutants that were on that list now appear to be of such low priority (mainly due to very low emission rates) that comprehensive health assessment will probably not be necessary or appropriate.

C. The Regulatory Process

To date, EPA's process for making regulatory decisions in this area has involved six major steps.

1. As a first step, potential hazardous air pollutants are identified from information gathered from technical literature, studies conducted by public agencies and private research groups, and scientific and other sources. These substances are then prescreened to determine their toxicity and potential for public exposure to air emissions from stationary sources. Preliminary information on production, uses, volatility, ambient air data, and previous scientific assessment is collected. Finally, the substances are ranked to ensure that the Agency concentrates on the most important candidates.

EPA initially identified six hundred and thirty-two organic chemicals as potentially hazardous air pollutants. Following prescreening and ranking, in which highest priority was given to pos-

sible carcinogens, mutagens, and teratogens likely to be present in the ambient air, further assessment was then commenced for approximately 40 substances. The identification and screening process is a continuing activity so as to incorporate the most recent scientific data to enable EPA to focus on pollutants that are of primary importance to public health.

2. The next step is assessment. Information is acquired to support a decision for regulatory action and, with input from appropriate Agency offices, decisions are made on each chemical brought through identification and screening.

The assessment process includes both health assessment and exposure assessment. The exposure assessment is a preliminary estimate of sources, emissions and likely ambient concentrations and is done in parallel with the health assessment. At one time, the health evaluations primarily focused on carcinogen assessment which summarized the evidence indicating potential carcinogenicity for humans and gave an estimate of the carcinogenic potency. Assessments of this type were prepared for a number of the chemicals identified for study. Some of these were reviewed in 1980 by a special Science Advisory Board (SAB) committee which recommended more extensive documentation. As a consequence of the SAB Committee comments and comments from the public, the Agency decided to acquire more scientific data in the form of expanded health assessment documents to support decisions under Section 112. Further discussion of this issue appears later in this statement.

The current health assessment documents are comprehensive and evaluate all of the known health effects for a given pollutant. To

the extent possible, these documents are multimedia assessments which can be used by other EPA program offices. Any previous work done in EPA on the substances under evaluation is used in developing the documents.

The assessments are drafted either by EPA staff or under the direction of EPA staff through the services of outside contractors, or a combination of contractors and EPA staff. The documents are then reviewed by outside experts in peer review workshops. Revisions are made as a result of the peer reviewers' comments. An external review draft is made available for public review and comments and subsequent review by the SAB in a public meeting. This review process is similar to that required for the Air Quality Criteria Documents and results in documents of high quality, containing the most current scientific information and judgments on the health effects of the substances being evaluated.

3. The third step is the decision whether to list the pollutant as "hazardous." If EPA concludes, after considering comments from the SAB and the general public, that a substance is or is likely to be either toxic or carcinogenic at ambient levels and that there is significant public exposure, the substance will be considered for regulation under Section 112.

4. If a pollutant is listed under Section 112, the fourth step is a detailed assessment of the sources and resulting exposure fror the pollutant. (Some of this assessment may have been done prior to listing).

The following factors are considered in establishing the priority of the category:

(1) magnitude of expected risks;

(2) economic and technical feasibility of control improvements;

(3) ease of standards development and implementation; and

(4) impacts of other regulatory efforts, planned or underway.

All source categories of the pollutant that are estimated to result in significant risks are evaluated. If a category is already well controlled (for example, by other EPA standards, other Federal, State, or local requirements, or standard industry practice, and EPA expected that the level of control will continue), a Section 112 standard would be redundant and need not be established. In that case, a decision not to regulate that source category would be proposed.

5. If a source category is not already controlled to an acceptable level, EPA then sets a Section 112 emission standard. In setting the standard, EPA considers risk (both estimated individual lifetime risk and cancer incidences per year), available control techniques, availability of substitute materials, costs and economic impacts, energy, and environmental impacts. The level of control required may be different for new and existing sources within a source category because of additional problems associated with retrofitting controls on existing sources.

6. The final step is standard review. Several years after EPA issues the regulation, periodic reviews are conducted to determine if recent technological developments or new health effects infcrmatic

indicate a need to change the standard. The criteria for decision-making during standard review are the same as those used during standard development.

IV. Specific Problems Experienced in Implementing This Program

A number of fundamental problems arise in regulating airborne toxic pollutants: including those relating to delay, uncertainties in potential health risks, and the question of what level of control should be required in dealing with non-threshold pollutants. In reviewing EPA's experience in implementing this program, a number of key points should be kept in mind.

(1) The nature and magnitude of health effects associated with ambient exposures is very uncertain, particularly for potential human carcinogens.

(2) Ambient levels are usually relatively low when compared to occupational exposures.

(3) Many, but not all, non-criteria pollutants of concern are controlled by the volatile organic compound and particulate control programs. Exceptions include a number of organics which are low in photochemical reactivity and certain metals which are gases at typical stack temperatures but condense into particles at ambient temperatures.

(4) Science is not likely in the foreseeable future to identify either threshold levels of concern or risk-free levels for chronic exposure to most potentially toxic pollutants.

(5) Frequently there are low cost control measures which can achieve reductions of 50% to 90% at uncontrolled facilities. More stringent controls can always be designed at a higher cost, but zero emissions are not generally possible.

(6) The fixed regulatory schedules in section 112 are not generally feasible and tend to discourage rather than encourage the development of rules under this authority. Additional fixed decision schedules based on a pollutant-by-pollutant approach would do little to remedy this problem or yield much health benefit.

A. Delay in Regulating Air Toxics

Despite our progress in the regulation of certain air toxics, EPA's efforts to date have been criticized by many, including some in industry, the States, environmentalists, and most recently the General Accounting Office, as being plagued by delay. We agree with the General Accounting Office that the delays in implementing Section 112 have been substantial and, to a large extent, avoidable.

The GAO concentrated on delays in finalizing health assessment documents and issuing standards. GAO concluded that a number of elements contributed to delay in finalizing health assessment documents, including: securing SAB review and approval of health assessment documents; disagreement over the sufficiency of data needed to show cancer-causing effects and over the best method to characterize a substance's potential adverse health effects; policy shifts at EPA concerning the type of data to be included in health assessment documents; and extensive reviews of the health assessment drafts.

GAO pointed to the following causes of the delays experienced in issuance of standards: effect of court-imposed deadlines on work on other substances due to shift of resources required to meet the court-ordered deadlines; and time consuming acquisition of cost data.

In general, we would agree with GAO's identification of these factors as having contributed to delay. The long time required for EPA to announce a decision to list a pollutant as "hazardous" under section 112 has been principally due to three causes: (1) poor management of the regulatory process within EPA, resulting in inadequate and ineffective coordination, and in shifting EPA policies concerning how the NESHAPS process should work; (2) the time consuming and complex process of developing scientifically and legally defensible assessments of the effects of a substance on human health at levels found in the ambient air; and (3) the need to make decisions about the feasibility and desirability of regulating sources of the substance before it is listed. This last element is a result of the way the statute is written; Section 112 gives EPA only 180 days from the date of listing a substance to propose regulations to control it, with another 180 days to promulgate the rules. Our experience has shown that this simply is not a realistic timeframe in which to adequately develop, review, and take public comment on the scientific, technical, economic, and legal elements of a standard. Therefore, in an attempt to minimize conflict with the legislative deadline, there is strong pressure to delay listing until substantial work has been done on the regulations.

The slow regulatory pace in implementing Section 112 of the Clean Air Act, has been due, in part, to the scientific controversies about certain aspects of carcinogen risk assessment, e.g., the validity of the mouse liver as a bioassay model for chlorinated solvents and pesticides and the validity of the linear non-threshold extrapolation model for quantitative risk assessment. Because of these controversial issues, the Agency turned increasingly to the Science

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Advisory Board for guidance. The Science Advisory Board in turn requested extensive documentation of the evidence underlying risk assessments.

In the fall of 1982, an EPA committee was convened to decide the nature and extent of the scientific documentation necessary to support Section 112 decisions. The Committee also discussed the extent of the peer review process and the role of the SAB. A final report discussing the nature and extent of the documents and the extent of the peer review process to be followed was issued in January of this year. The Agency has established a standing SAB Committee to replace the previous ad hoc committee approach. Over the last year the scientists responsible for the health evaluations have established understandings with the SAB on a number of important issues which are common to the evaluation process.

In many cases, the Agency has waited for "closure" from the SAB, that is, a written statement from the SAB approving of the Agency's health assessment, before making regulatory decisions. However, there may be cases where the SAB's criticisms of a health assessment are not so fundamental as to prevent the Agency from relying on its health assessment in making regulatory decisions. To avoid unnecessary delay, I will take care that in the future the Agency proceeds to make decisions based on its health assessments as soon as those assessments are of good quality, and major scientific issues have been resolved or at least fully debated.

We have doubled the internal resources devoted to producing health assessment documents. Detailed health assessments are now being prepared for over 20 substances. These assessments are being or will

be reviewed by the Science Advisory Board's Environmental Health Committee. The Agency's commitment is evidenced by the seven documents that have cleared SAB review in the past year.

You are correct, Mr. Chairman, in asserting that over the past few years EPA has made substantive and procedural changes in developing health assessment documents. While these changes may have initially caused delays in listing hazardous air pollutants, we believe that in the longer run they will save the Agency considerable resources and lead to better decisions. In the past, EPA produced separate health assessment documents for each environmental medium; we now develop a single, multimedia document for a given pollutant so that the various EPA programs make decisions that are as consistent as possible with scientific knowledge as it exists at the time. This may have delayed decisions on some air toxics that were in the pipeline when this change was made, but from the point of view of EPA as a whole it is hard to argue with this procedure.

I believe that EPA can in the future proceed in a more expeditious manner. Many of the problems we have encountered are problems normal to implementing any complex program in a rapidly evolving scientific field and we think most have been overcome and the rest are being addressed. We have taken a number of actions as described over the past year that will expedite the process.

Regardless of any steps either the Congress or the Agency take to minimize delay, the process of collecting and evaluating scientific evidence of the health effects of a substance will always require great care and time. Our aim is to make sure that, if any delay occurs (that is delay which proves to be unavoidable), it is due to

the actual complexity of the science or a decision relating to a substance rather than due to meaningless intricacies or absurdities of the process. We owe this to the public which has placed its trust in us to make decisions regarding their health. In return, the public deserves the assurance that these important decisions are being made with sound foundation, on a timely basis, and as a result of a process which makes sense in light of its goals.

B. Uncertainties in Potential Health Risks

For public health protection policies, most carcinogens are assumed to present a finite risk at any level of exposure, risks that increase as the level of exposure increases. These risks can often be quantitatively estimated. However, the use of quantitative risk estimates is accompanied by great uncertainty. Some of these uncertainties spring from:

1. Inability to estimate risk at low doses in ambient air, based on knowing that a given health effect occurs at high doses in occupational situations or with animal exposure.

2. Questions about what constitutes an equivalent dose for humans corresponding to an administered or absorbed animal dose.

3. Difficulties in determining what level of risk is acceptable as a residual risk in the face of scientific uncertainty.

EPA has generally followed conservative techniques which yield a plausible upper-bound estimate of risk at low dosage. We usually identify substances as carcinogens through animal experiments or through the epidemiology of worker exposure. Environmental exposures are typically much lower than the doses found in such research, so to use this information to generate estimates of risk from hazardous air pollutants we must extrapolate down from those high doses.

Since we do not know enough about how cancer works to establish the actual dose-response curve for low-dose exposure for most cancers, EPA uses a linear, non-threshold model to place plausible upper bounds on risk. This model assumes that, in effect, any dose greater than zero has some possibility of causing cancer. Until an actual dose response relationship can be established, it seems prudent to assume no threshold. The true risk is thus unlikely to be higher than those obtained from the model we use, and for many chemicals could be considerably lower. We make other conservative assumptions as well: we base our exposure estimates on dispersion modelling, which tends to overestimate human exposure; we assume that people spend all their time out of doors breathing ambient levels of these pollutants; we assume that a substance acts as a carcinogen in humans with the same potency it shows in the most sensitive subgroups of laboratory animals. In short, we do a great many things to avoid underestimating potential cancer risk or saying that something is not a potential carcinogen when it really is one.

There are also large uncertainties associated with estimating exposure to population sub-groups because of difficulty in obtaining precise data on emission rates and atmospheric dispersion patterns, and because of the lack of information on short-term and long-term movement (migration) of people and indoor versus outdoor toxic air pollutant concentration patterns. Further, ambient monitoring data are limited, as well as both very costly and time consuming to obtain for use in exposure assessment. There are also uncertainties concerning possible additive effects of multiple sources or pollutants, synergistic or antagonistic health effects, and heightened susceptibil-

ties to some cancers of some population groups. Only very rough estimates of the magnitude of the risk to human health are therefore possible, based on the available data. Until an actual dose response relationship can be established, it seems prudent to assume no threshold. The true risk is thus unlikely to be higher than those obtained from the model we use, and for many chemicals could be considerably lower.

C. Control of Non-Threshold Pollutants

A basic issue arises when dealing with potential regulation of non-threshold pollutants: How much control is enough when addressing non-threshold pollutants?

It is because we assume most carcinogens present some risk at any level that control decisions are so complex. Were this not the case--were there exposure levels below which we clearly knew there is no risk of cancer--the standards could be set so as to prevent those exposure levels. This cannot be done for most carcinogens unless standards prevented any exposure at all, which would in turn require preventing any emissions. We do not believe that Congress intended Section 112 standards to cause widespread shutdown of industries emitting nonthreshold pollutants (such as arsenic, asbestos, vinyl chloride, benzene and radionuclides). Nor do we believe that Congress intended Section 112 to eliminate all risk. We believe instead that EPA may establish emission standards for such substances at levels that may present some human health risk. Exactly how much risk should be permitted is the subject of spirited disagreement.

One major issue here is whether protection should focus on the risk to the most exposed individuals or to the exposed population

as a whole (aggregate risk). Even in cases where the total impact of a chemical on the population is quite low, individual risks for a very small number of people living close to uncontrolled or partially controlled emission sources may be relatively high.

These are issues which I, as Administrator, face each time a decision is required on the amount of control that will be necessary to provide protection for public health with an "ample margin of safety." Neither the language nor the legislative history of Section 112 reveals any specific Congressional intent on how to deal with these issues and how to apply "ample margin of safety" language to nonthreshold pollutants that may present cancer risks at any level of exposure.

The Agency's practice in regulating non-threshold pollutants (i.e., carcinogens) under Section 112 has been to set standards at levels that reflect identified control techniques. Recent experience shows that this practice poses difficult issues. Three examples, drawn from the proposed standards for benzene, radionuclides and arsenic, respectively, illustrate these issues.

The Agency has proposed emission standards for benzene, reflecting known control techniques for four source categories. However, the risks posed by several of these categories, such as maleic anhydride plants, and the risk reductions achievable by those standards, are relatively small. This raises the question of whether such standards are necessary or appropriate to protect public health.

For radon emissions from uranium mines, we cannot identify a practical control technique that will achieve major reductions in risk. The standard proposed for this source category would

probably be met in practice by the mine's obtaining control over nearby property so that members of the public would not reside in areas most exposed to the radon emissions. The proposed arsenic standard would achieve significant reductions in exposure and risk due to copper smelters. However, the exposure and risk remaining after control may still be considered significant around one smelter in Tacoma, Washington. A significantly more stringent standard may result in shutdown of this smelter. These two examples raise the issue of what level of residual risk is acceptable in view of the impact of further control.

Recommendations

To assist the Agency in its future efforts to address hazardous air pollutants, let me propose the following steps. First, I want to clear the decks of decisions that have been pending for a considerable time. We intend to make decisions on the benzene, arsenic and radionuclides emission standards as quickly as possible. Next we will examine all the 25 standard setting projects we have under way and determine which are most likely to generate major public health risk reductions. We will concentrate all our resources for producing air toxics rules on those. In addition, as regards our listing effort, we believe we can complete, by the end of 1985, decisions for approximately twenty to twenty-five substances on the list of thirty-seven. In our judgment, that will account for the overwhelming majority of the public health risks represented by the substances on the list of 37 and controllable under Section 112.

Whatever decisions emerge from this list, I believe we need more flexibility in regulating hazardous air pollutants. Most

parties agree that the current statutory test is unworkable, if interpreted literally, and, as I indicated earlier, this test can lead to a certain paralysis in decision-making. A more flexible test may well allow for more productive use of Section 112 in dealing with hazardous air pollutants. I think the Congress should examine a test in which the Administrator weighs such factors as the costs of a particular control stategy and the benefits of the substance against the risk reduced. I would be glad to work with the Congress in searching for such a test.

I am not suggesting by proposing these changes that public health should be compromised. I understand how important a value public health is to the American people. The Congress should reflect this public committment to health in the statute and legislative history so that no Administrator could mistake its meaning. It is my view that to suggest one factor in a necessary balance is to be given more weight than another is not to suggest the balance need not be struck. I believe section 112 can reflect scientific and social reality and should be made to do so by the Congress.

Coupled with a more flexible test, there would also be value in a broader choice of regulatory tools. The law at present directs me to set "national emissions standards" for toxic air pollutants. In some cases, an emissions standard in the traditional sense may not work as effectively as an ambient standard, or requirements for the use of certain technology or other control measures. Although there is some flexibility in the current Act, an explicit statement of our authority here would be invaluable in devising a coherent and sensible regulatory system.

Certainly we must begin to deal more efficiently with local problems. We have started to work on options for doing this. Several states have independently begun to control local toxics problems and there is little question that our approaches must be closely tied to the existing machinery of Federal-state partnership.

This concludes my prepared statement. I will be happy to answer any questions you may have.

ATTACHMENT I

Status of Toxic Air Pollutants

Listed Pollutants	Major Source Categories	Regulation Status
Section 112		
Asbestos	Mills, manufacturing, demolition	Promulgated
Beryllium	Extraction plants, foundries machine shops	Promulgated
Mercury	Smelters, chlor-alkali, sludge incineration	Promulgated
Vinyl Chloride	Manufacture, polymerization	Promulgated
Benzene	Chemicals and petroleum refining and distribution	4 Proposed; Others under study or development
Arsenic	Copper smelters, glass plants	Proposed
Radionuclides	Uranium mines, elemental phosphorus plants, DOE facilities, NRC-licensed facilities	Proposed

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 1 1984

OFFICE OF
AIR AND RADIATION

Honorable Robert T. Stafford, Chairman
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am attaching a copy of the comments received by OMB on S. 768. We have been requested by OMB to submit these comments to you as part of the record for the hearings held on Friday, February 24, 1984.

If you have any comments, please do not hesitate to contact me.

Sincerely yours,

Joseph A Cannon

Joseph A. Cannon
Assistant Administrator
for Air and Radiation

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

15 FEB 1984

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

This letter is in response to your request for the views of the Department of Justice on S. 768, a bill to amend the Clean Air Act. While the Department of Justice makes no recommendations with regard to most provisions of the bill, we recommend against enactment of Section 301 in its present form.

The bill would revise various portions of the Clean Air Act and add new provisions addressing various issues -- most notably acid rain and the interstate and international migration of air pollutants. A summary of certain provisions follows.

1. Section 104 would establish detailed procedures for reviewing revised State implementation plans -- including an express requirement of a public hearing.

2. Section 106 would require that the Administrator designate and review at least forty substances for consideration as "hazardous air pollutants" under Section 112(b)(1)(A) of the Act, and that targeted substances not reviewed before the deadline contained in the bill would be designated by operation of law.

3. Section 108 would tighten the non-compliance penalties provision of the Act, by closing minor loopholes.

4. Impairment of visibility provisions now contained in Section 169A of the Act would be eased by Section 112, which would also allow governors to veto new requirements on existing sources intended to prevent or remedy impairment of visibility.

5. Section 114 would define "best available control technology" as applied to stationary sources in non-attainment areas. The test would be achievement of the "maximum degree of reduction. . . on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs."

6. Section 119 would amend Section 176 of the Act, which now precludes federal highway and transportation funding in the absence of a qualifying State plan, by giving the Administrator the discretion to order the withholding of federal funding and by exempting certain Interstate highway funds from withholding.

7. Section 120 would constitute an entirely new "Part E" to the Act, addressing acid rain, and Section 121 would amend existing Section 110(a)(2)(E) to require that State plans take into account the extent to which sources may "interfere with," rather than "prevent" attainment or maintenance of standards by another state, and the extent to which they may cause or contribute to adverse health, welfare or environmental effects in another state or foreign country.

Section 301(a) of the bill would amend the existing judicial review provisions in Section 307(b)(1) of the Clean Air Act by, among other things, creating a procedure for determining which court of appeals should review a final action of the Environmental Protection Agency (EPA) when petitions to review the same agency action have been filed in two or more courts of appeals within 30 days of the filing of the first petition. In any such instance, the amendments would require EPA to give written notice to the Administrative Office of the United States Courts that petitions have been filed in two or more courts of appeals and to identify the courts in question. Thereafter, the Administrative Office,

using a random selection process, would be required to designate the reviewing court. Pending designation of the reviewing court, any court in which a petition had been filed would be authorized to postpone the effective date of the agency action under review until 15 days after the Administrative Office designated the reviewing court.

As presently written, Section 301(a) would allow petitions for review of nationally applicable final actions of the Administrator to be filed in any circuit "in which the petitioner resides or transacts business." Although the Department supports amendment of the Act to allow petitions to be filed in any appropriate circuit, the proposed language would allow petitions to be filed wherever a plaintiff "transacts business," whether or not that business is related to the action being challenged. So broad a provision serves no valid apparent public interest and will merely invite forum shopping without regard to the true center of gravity of the specific case. A similar deficiency in S. 757 (pending amendments to the Solid Waste Disposal Act) was cured at our request by the addition of a qualifier. We suggest that the words "which is directly affected by such action" be added after the phrase "transacts business," at page 106, line 9 of the March 10, 1983 draft of the bill.

A second qualifier to a comparable provision of S.757, which was added at our request, provides that:

> "Any action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement."

We strongly urge inclusion of this same provision in Section 301(a) of S.768, so that final actions which have been open to a process affording full due process and review will not be subject to subsequent collateral challenges designed to delay or impede enforcement.

The portion of Section 301 which authorizes any court to postpone the effective date of EPA's administrative action appears unnecessary. The mere fact that no single court has been designated as the forum for review during some interval of time imposes no undue burden on any person challenging an EPA action. If a litigant is in need of immediate judicial relief, the existing provisions of 5 U.S.C. §705 and Rule 18 of the Federal Rules of Appellate Procedure already

provide a ready mechanism for affording relief. In view of the existence of these provisions, the Department of Justice questions the need for the stay provision proposed in Section 301(a) of S. 768.

Furthermore, enactment of the amendment in its present form may cause confusion and needless delay in the implementation of EPA's regulatory actions because the stay provisions of §301(a) do not specify standards for granting or denying requests for postponement of the effective date of such actions. It is not at all discernable from the text of §301(a) whether a court should grant a request to delay the effective date of a final action simply because petitions for review have been filed in two or more courts of appeals, or whether the party requesting the delay must satisfy the traditional criteria for obtaining a temporary stay of agency action. The lack of clarity on this point will likely result in conflicting appellate court decisions and encourage litigants to seek unwarranted delays in the effectiveness of EPA actions.

Section 301(a) would also allow persons challenging EPA's actions to file petitions for review within 120 days. Under present law, such petitions must be filed within 60 days. Allowing a litigant two months within which to seek judicial review appears ample. Enlarging the time to four months seems unwarranted, particularly in light of the fact that it prolongs the period of uncertainty over the ultimate validity of EPA actions. The broad impacts of EPA's actions under the Clean Air Act counsel in favor of encouraging prompt judicial resolution of challenges to the agency's actions. Since §301 runs counter to this objective, enactment in its present form seems ill-advised.

In conclusion, the Department of Justice recommends amending S. 768 in certain respects for the reasons discussed above. Whether the remaining aspects of this legislation should be enacted involves policy considerations as to which the Department of Justice makes no recommendation.

Sincerely,

(Signed) Robert A. McConnell

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

January 26 1984

The Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, DC 20503

Dear Mr. Stockman:

As requested by your office, we have reviewed S. 768, a bill "To amend the Clean Air Act."

Sections 110, 112, 119, 120, and 304 of S. 768 would affect the programs of the Department of Agriculture. We have no objection to the enactment of S. 768 if amended as recommended herein. We defer to the views of the Environmental Protection Agency and other Departments on the remaining provisions.

Section 110 Prevention of Significant Deterioration

Section 110 would amend the Prevention of Significant Deterioration (PSD) program established by subpart 1 of part C of Title I of the Clean Air Act. Subpart 1 establishes the categories (class I, II, and III) of air quality areas, sets maximum allowable increases in some air pollutants for each class of area, assigns responsibility to Federal land managers, and establishes preconstruction requirements of major emitting facilities.

The provisions of section 110 would eliminate the statutory requirement for a 1-year period of preconstruction monitoring of air quality. While we could agree with the elimination of the statutory 1-year data requirement, it should be recognized that the present EPA approved air quality models used by Forest Service managers of class I areas require a minimum of 1-year of data.

Section 110 would amend section 165 of the Clean Air Act to require the State permitting authority to notify the permit applicant within 2 months of filing that the application is complete and, if not, what additional information is required to complete the application. The State permitting authority should be required to consult with the Federal land managers before a permit application is declared complete to ensure that the Federal land manager has adequate data to evaluate potential impacts to class I areas. We recommend that the following sentence be added at the end of section 165(c): "The permitting authority will consult with the Federal land managers of any affected class I area before determining a permit application is complete."

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Section 110 also expands the affirmative responsibility of the Federal land manager, cited in section 165(d)(2)(B) of the Act, by specifying that the responsibility includes monitoring air quality in class I areas, such as National Parks and Wilderness Areas which exceed 5,000 acres, and assisting in the determination of baseline concentrations (existing air quality) in such areas. We believe that the permit applicant should retain responsibility for conducting such monitoring as may be necessary and as is presently required in section 165(a)(7) of the Act. Federal land managers should be responsible only for reviewing the air quality and air quality related value data collected by the applicant to assure that the data are adequate for the evaluation of potential impacts to class I areas. To clarify that it is the land manager's responsibility to review and comment on the adequacy of the information provided by the applicant rather than collect new information, we recommend that section 110(d)(7)(C) be amended to read: "to file a notice, and supporting information, to the permitting authority in any case in which emissions from a proposed major emitting facility may cause or contribute to an adverse impact on the air quality-related values (including visibility) of such area, and to review the adequacy of the monitoring and analysis of the air quality and other information (including information on the effects of air pollution on the air quality-related values of such areas) done by the applicant as is necessary to...."

A fourth point relative to section 110 deals with prescribed fire as it is used by agriculture and forestry to meet land management objectives in an ecologically sound and cost-effective manner. Prescribed fire is used to reduce fuel buildups, to prepare harvested areas for planting, and to destroy insect and disease pests. The Environmental Protection Agency, pursuant to section 301, Administration, and section 169A, Visibility Protection for Federal Class I Areas, of the Clean Air Act, has determined that smoke from prescribed fire is human-made air pollution and a significant cause of visibility impairment, especially in the West. Such a determination threatens the continued use of prescribed fire.

We recommend that section 110(b) be amended to add the following provision to section 163 of the Clean Air Act: "Periodic temporary emissions from agriculture and forestry burning are not subject to National Ambient Air Quality Standards." Although this would exempt agricultural and forestry burning from the National Ambient Air Quality Standards, such burning would continue to be subject to State regulations. Prescribed burning on National Forest System and other Federal lands would continue to be subject to the requirements of the National Environmental Policy Act (NEPA) and would include involvement of the State agency responsible for smoke management. The amount and timing of prescribed fires are regulated by the State Forestry or other designated State agency based on meteorological conditions, forecasts, and smoke management plans. These plans set forth management activities which are designed to keep smoke out of sensitive, populated areas where human health and welfare are at risk. These activities usually require permitting prescribed fire only when the smoke plume will move away from population centers and towards largely undeveloped, and sparsely populated areas.

Section 112 Visibility

Section 112 would amend section 169A of the Act, which provides for the protection of visibility in the mandatory class I areas defined in section 162(a) of the Clean Air Act. It would clarify certain visibility protection program provisions and limit the definition of an integral vista to include only those under the jurisdiction of the National Park Service and listed by the Department of the Interior in the January 15, 1981, Federal Register. We recommend deleting all references to integral vistas.

Our concern over integral vistas is not diminished even though this section limits integral vistas to those identified by the Department of the Interior. Although the site of the vista is located within a National Park, the integral vista encompasses the whole landscape that can be seen, to include lands outside the National Park. The application of the concept of integral vistas beyond the National Park boundaries impinges upon the authority of the States to control emissions from activities within their jurisdiction. It would also limit management options available to Federal, State, and private land managers located some distance from the National Park.

Integral vistas can extend across National Forest System lands. Strict enforcement could constrain the Department of Agriculture from carrying out our mandated responsibility for managing National Forest lands. Moreover, we are also concerned that integral vistas will prevent the location of electric power facilities receiving financial assistance under the Rural Electrification Act, since a remote plume from the facility may still violate visibility standards. The reduction of emissions causing the plume may impose substantial, additional electric utility costs on consumers.

Section 119 Limitations on Certain Federal Assistance

Section 119 would amend only subsections (a) and (b) of section 176 of the Clean Air Act. We recommend that section 119 be amended to also include amending subsection (c) of section 176 to clarify and limit the meaning of the term "support in any way." We believe that conformance by Federal agencies with State air quality implementation plans should be limited to just those activities directly administered or supported by Federal agencies and thus recommend the clarifying amendment. We recommend that section 176(c)(2) be changed to read "(2) directly support or provide financial assistance for,. . .".

The phrase "support in any way" is so far-reaching that it could expose Federal agencies to unending air quality effect analyses and legal actions. For example, the development of a major ski area may require the use of Federal lands. The Federal lands will be used for the actual ski runs and associated ski lifts. The Federal agency managing these lands has authority to permit such use. Section 176(c) now requires the Federal agency to assure that the activity being permitted is in conformance with the State Implementation Plan, and that activities supported by issuing the permit are also in conformance. This could extend to a ski village being constructed as part of the ski area even though it is on private land, miles removed from the federally permitted activity. The "support in any way" provision puts Federal agencies in the role specifically assigned to States and local governments by the Clean

Air Act. In the example, it would seem that, if there is an air quality problem with the ski village, it should be evaluated and resolved by State and local governments, and the Federal agency's concerns would be limited to emissions of regulated air pollutants from land or facilities under its authority.

Section 120 Interstate Transport and Acid Precursor Reduction

Section 120 of S. 768 would amend Title I of the Clean Air Act by adding a new part E (Sections 180-187), entitled "Interstate Transport and Acid Precursor Reduction." Sections 180-182 of part E would define the purpose of the new part, establish an acid deposition impact region, and require a number of studies and demonstrations to be conducted. Sections 183-187 of part E would address the problem of acid deposition in the eastern United States by requiring controls on acid precursors and a reduction of sulphur oxide emissions.

We are aware that the Administration has been evaluating alternative courses of action concerning the acid rain issue. We would like to be consulted on the Administration's recommendations on section 120. This Department in particular has expertise and should have a role in the monitoring and research on the extent and effects of acid rain.

Section 304 Wood Smoke Study

Section 304 of S. 768 requires the Administrator of the Environmental Protection Agency to conduct a study of the effects of wood combustion on ambient air quality, and in particular of emissions of carbon monoxide and particulate matter, and to undertake research on methods to accurately measure emissions from wood stoves, fireplaces, and other such wood combustion devices. We believe that the inclusion of the provision is appropriate.

Sincerely,

Richard E. Lyng

Richard E. Lyng
Acting Secretary

RESPONSES FROM THE ENVIRONMENTAL PROTECTION AGENCY

Questions from Senator Symms

1. Q: As you know, in 1981 the National Commission on Air Quality recommended that the carbon monoxide emission standard for automobiles be changed from 3.4 to 7 grams per mile. In the last Congress EPA testified that changing to a 7 gram standard would not impair the ability of carbon monoxide nonattainment areas to achieve the National Air Quality Standard before the statutory deadline. Has the Administration's position changed on this issue?

   A: Our analyses have repeatedly shown that the difference between a 3.4 and 7.0 new car standard will not significantly affect CO attainment. Because of past disagreements over mobile source models, we have engaged in a process involving State representatives, environmental groups, and industry to revise our model used to project air quality. That cooperative effort is now almost completed. Preliminary projections based on the revised estimates continue to show little difference in in-use emissions at a 3.4 versus a 7.0 new car standard, but we expect to have this modeling update completed within the next couple of months. Of course, we will provide the Committee with the results of our revised modeling effort to use in its consideration of any changes in the new car standard.

2. Q: In your testimony you say that it should be made a federal crime for individuals to tamper with the pollution control systems on their cars. I have two questions. First, isn't this problem addressed by mandatory inspection and maintenance programs in areas where such tampering might cause air quality problems, and secondly, would this apply only to removing or disabling a catalyst or would it apply to any modification of a vehicle which adversely affects the performance of the emission control system?

   A: Although motor vehicle inspection and maintenance programs do tend to ameliorate the tampering and misfueling problem somewhat, our surveys indicate that they do not eliminate the problem by any means. The prohibition on individual misfueling and tampering would apply to the same type of activity now prohibited for business entities, i.e., filling an unleaded vehicle with leaded gas and removing or rendering inoperative emission controls. Any modification of a vehicle's control design which causes a vehicle to exceed standards would be covered, as it is now for manufacturers, dealers, repair facilities, and fleet operators.

Question from Senator Simpson

Q: If Deputy Administrator Alm decides to retain the concept of integral vistas, will EPA re-examine a full range of available options on a priority basis as soon as possible so that the states can use the revised EPA guidance in the SIP revisions required by the litigation settlement agreement? What are some of these options? Would you consider the following options?

A: EPA has no plans at present to amend the protections for integral vistas in its visibility regulations in the event that it denies the still pending petitions to delete those protections altogether. EPA believes the present regulations do not impose unreasonable costs and offers the states a high degree of flexibility. No petition to amend the protections has been submitted to EPA. If one were, EPA would of course consider it seriously. There is a strong chance, however, that EPA, even if it decided in the near future to amend the protections, could not complete the necessary notice and comment rulemaking in time to provide a useable final product for the SIP revisions that the proposed EDF settlement contemplates. For instance, the agreement would require EPA to propose protections for integral vistas to the extent necessary within 26 months after the court approves the agreement. EPA might be unable to complete its action in less than 26 months in which case the guidelines would not be available for the SIP revisions.

TABLE I

SPECTRUM OF OPTIONS FOR HANDLING INTEGRAL VISTAS*

1. Delete integral vistas altogther from Class I area visibility protection requirements.

2. Allow vistas to affect facilities located on non-Federal land only to the extent that state, county, and/or local jurisdiction consents.

3. Limit the distance of vistas to 50% of the average visual range (e.g., 15 miles). Up to this distance, visibility does correlate with air quality.

4. Limit the size of vistas so that the area of all vistas from a park cannot exceed some factor of the area of the park itself (e.g., 5 times the park area, or 2,000 sq. miles maximum.)

5. Limit viewing sites for defining vistas to only those sites where at least 25% of the annual park visitors (or, at least 500 people per year, minimum) visit.

6. Allow visibility exceedances in the vista definition for periods of time when the park is not in general use. For example, during winter months when most park peaks are inaccessible, there is no need for vista protection since there is no one at the site to enjoy the view.

7. Add a vertical angle of vision (i.e., z direction) to the present horizontal angle of vision (i.e., x,y direction) in the vista definition. This would remove much low valley area from the vista definition, yet retain the visual enjoyment of seeing distant peaks.

8. Carry out the extreme integral vista provisions of the 1980 regulations, 40 CFR 51.300-307. This allows for unreasonably large vistas--as far as the Land Manager can see from the highest peak in the park.

*These options are not necessarily mutually exclusive.

CRF 2/21/84

Questions from Senator Durenberger

1. Q: You stated in your testimony that misfueling is a significant problem and put forth several proposals to deal with the problem. Perhaps we should deal with the reasons that people misfuel. Would you say that performance is a significant factor in misfueling?

   A: Our best information suggests that performance, both real and perceived, is a factor in misfueling. However, price appears to be the principal motivation.

2. Q: Perhaps we should require a higher octane for unleaded or we should tell the auto makers that their standard models ought to run well with lower octane fuel. Are adjustments like that possible or reasonable?

   A: Those kinds of requirements are possible, but it is not clear to me that they are needed. We do not have evidence that more than a small percentage of new vehicles are not capable of operation on 87 AKI unleaded fuel, the minimum now available. There are, of course, strong competitive pressures on gasoline producers to manufacture unleaded gasoline at sufficient octane to maintain a high degree of customer satisfaction, as well as on auto makers not to increase the octane demand of vehicles beyond that of fuels commonly available.

3. Q: In response to a question from Senator Randolph you indicated you met with auto manufacturers to discuss the performance problem. What did you learn in that meeting?

   A: One point manufacturers have made is that in optimizing fuel economy, emissions, and drivability, the settings of the vehicles were likely to produce some slight trace knocking. That trace knock is not, according to the manufacturers, harmful to the engine. The manufacturers claimed that new cars are designed to operate on 87 AKI fuel. Of course, dealers can make adjustments if serious knocking is encountered, and in some instances higher octane unleaded fuel may be needed.

4. Q: A second reason people misfuel is the price. There are various ways to remove the incentive for misfueling. We could tax leaded at a higher rate. Or we could prohibit refiners and service stations from selling leaded at a lower price than unleaded. Would you comment on these possibilities?

Questions from Senator Durenberger

A: As you may be aware, EPA is currently reviewing the merits of further reductions in the lead content of gasoline. Statutory authority exists within the Clean Air Act to control lead if further control is merited.

5. Q: What about the technology at the pump. Could we make it more tamper resistant?

A: The restricted filler inlets in cars have been made more tamper resistant the past couple of years. However, so long as there are devices which can be used to bypass the filler inlets, there will be no truly effective way to combat the problem merely by making the fueling equipment tamper resistant.

6. Q: Another thing that we could do would be to ban the sale of leaded gasoline altogether. Is that something the Committee should put a date on?

A: See response to question 4.

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TESTIMONY OF

RANDOLPH WOOD

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ON S. 768, AMENDMENTS TO THE CLEAN AIR ACT

BEFORE THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

FEBRUARY 24, 1984

TESTIMONY OF

RANDOLPH WOOD

STATE AND TERRITORIAL AIR POLLUTION PROGRAM ADMINISTRATORS

ON S. 768, AMENDMENTS TO THE CLEAN AIR ACT

BEFORE THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

FEBRUARY 24, 1984

Mr. Chairman and members of the Committee, I am Randolph Wood, Administrator of the State of Wyoming's Air Quality Division. I appear here today on behalf of STAPPA, the State and Territorial Air Pollution Program Administrators, to present the association's views on S. 768. STAPPA is the national association of state air pollution control officials in the 53 states and territories of the United States.

Administrators of state air pollution control programs derive their mandate from section 101(a)(3) of the Clean Air Act which provides that states have the primary responsibility for implementing our nation's clean air laws. These officials are working professionals in the field and collectively have had hundreds of years of experience in directing air pollution programs. Consequently, we believe we offer the committee a unique perspective on the proposed legislation.

In reviewing S. 768, STAPPA used as its frame of reference a set of formal policy recommendations adopted and revised by the association since 1980. A copy of these recommendations is attached to my formal statement and I request that it be included in the formal hearing record.

STAPPA is pleased that S. 768 addresses many of our concerns. We are encouraged that the bill (1) retains the existing standard-setting procedures, (2) contains provisions to expedite the approval of State Implementation Plans, (3) strengthens the federal hazardous air pollution control program, (4) improves the program for Prevention of

Significant Deterioration, (5) extends attainment deadlines where appropriate, (6) requires a substantial reduction in sulfur dioxide emissions to abate acid rain, and (7) emphasizes the role of EPA in supplying technical assistance and support to the states.

We offer the following specific comments on the bill.

National Ambient Air Quality Standards

STAPPA strongly supports the bill's provisions for retaining the existing standard-setting process under Section 109 of the act. The association believes that the National Ambient Air Quality Standards are the very heart of the act because they specify the ambient concentrations of specific air pollutants that must be maintained for the protection of the public health and welfare. It is imperative that the primary standards continue to be based strictly upon health concerns and set at levels which ensure that public health is protected with an adequate margin of safety.

Since the National Ambient Air Quality Standards are so important, it is essential that these standards be promulgated and revised in a timely manner. Unfortunately, this has not always been the case. In fact, state air pollution control officials have been extremely frustrated over the unnecessary delays in revising both the particulate and nitrogen dioxide standards. While STAPPA is pleased that EPA soon will be announcing revised standards for both pollutants, we believe these lengthy delays must be avoided in the future. We therefore urge that the Senate Environment and Public Works Committee, through its oversight role, ensure that EPA revises the National Ambient Air Quality Standards according to the schedule set forth in the act.

State Implementation Plans

Over the years, states have become increasingly concerned with the cumbersome and lengthy process of federal review and approval of State Implementation Plans. When a state submits a SIP revision to EPA, it often has had to wait several years for EPA to approve the proposal. This inaction has led to uncertainty for states and industry, delays in construction and economic development, and ill feelings between states and EPA.

While EPA recently has expedited its review of SIP revisions, we still believe that the existing SIP procedure can and must be improved.

STAPPA compliments the sponsors of S. 768 for recognizing the inherent deficiencies in the existing SIP process and for recommending a program for automatic approval of SIP actions when EPA has not acted within a specified time.

New Source Review/Operating Permits

With respect to new source review, STAPPA recommends that the threshold limit for determining which facilities are subject to new source review requirements be 50 tons per year, rather than 100 tons per year as specified in the bill. Since approximately half of the states are precluded by state law (or policy) from adopting regulations more stringent than federal rules, we are concerned that the bill's provisions will prevent state officials from adequately regulating these smaller facilities.

STAPPA is pleased that S. 768 recognizes operating permits as a legitimate alternative to submitting each proposed SIP revision to EPA for review and approval. We believe the program will lead to more effective regulation of existing facilities and better relations between EPA and the states.

Prevention of Significant Deterioration

STAPPA agrees with the Committee chairman when, in reporting out S. 3041 in 1982, he categorized the PSD program as an air resource management tool. The PSD program provides a unique mechanism for states to determine how to use and protect the air in areas where ambient standards are maintained. However, in order for any management tool to be most useful, it must embody sufficient flexibility to allow its application over a wide range of circumstances. As you have heard over the past three years, the PSD program is extremely inflexible and thus has not enjoyed the widespread use by the states that is both desirable and necessary.

STAPPA believes that S. 768 contains several significant improvements to the existing PSD program. We agree, for instance, that the Class III increment system should

be eliminated. However, we strongly urge the Committee to also eliminate the short-term increments for both Class I and Class II areas. Some may argue that eliminating short-term increments will result in decreased protection for Class I and II areas. We submit, however, that the clean air resource management objectives can be achieved by using annual increments.

In past discussions of the PSD provisions of S. 3041, the Committee has recognized the technical and practical problems associated with the short-term increments. I therefore will not attempt to recount all of these problems. However, since some have expressed concern that the extra protection provided by the short-term increments is needed for some biological elements or air quality-related values, I would note that the increment system was not intended to provide all of the protection that was to be afforded by the PSD program. Rather, Section 165(d)(2)(C)(ii) allows a federal land manager to affect a permitting decision when he determines that an adverse impact is unacceptable, notwithstanding projected compliance with any of the increments. In Class I areas, this is an extremely important provision, since the increments themselves are arbitrarily derived and may not provide adequate protection for a sensitive air quality-related value.

STAPPA strongly supports the provisions of S. 768 under which a state may consider its own needs and objectives when determining whether to eliminate the Class II increments in an area. We believe this is a rational part of the clean air resource management process.

We suggest, however, that the committee simplify the process for "opting out" of the increment system. The provisions in the bill for developing 20-year air quality goals, for instance, appear to be administratively complex with no apparent commensurate benefit. Rather than impose these burdensome planning requirements on the states, we recommend that Best Available Control Technology be required on all sources emitting 50 tons per year (in place of the 100 ton-per-year limit in the Clean Air Act). We believe

that this change will provide emission reductions that will more than compensate for any anticipated environmental effects associated with "opting out" of the Class II increments or deleting the short-term Class I increments.

STAPPA also is concerned with the provisions on the BACT review under the PSD program. We do not believe it is necessary to mandate that states consider (but not necessarily adopt) the most stringent controls required of similar facilities. State air officials routinely survey emission limits of other similar facilities to ensure that these standards are based upon the most recent and reliable information. In fact, STAPPA has been working closely with EPA over the past two years to improve the BACT/LAER Clearinghouse, a data base that allows air officials throughout the country to review recent decisions on technology-based determinations.

STAPPA also questions the provisions of S. 768 that exclude fugitive emissions when determining increment consumption. Directors of state air pollution control programs are charged with managing the total clean air resource and are thus concerned with all emissions regardless of their source. Fugitive emissions consume increments of clean air and we believe that these emissions, where quantifiable, should be included in emission totals. The effects of emissions from stationary sources cannot be differentiated from those of fugitive sources; consequently, we must be equally concerned with both.

Nonattainment

STAPPA offers the following comments on the nonattainment provisions of S. 768.

First, STAPPA agrees with the provisions of the bill that delete the Lowest Achievable Emission Rate (LAER). We suggest that LAER be replaced with Best Available Control Technology for all new and modified sources emitting more than 50 tons per year of a pollutant. Our recommendation would make the technology requirements consistent for all new or modified sources, regardless of whether they locate in a PSD or nonattainment area.

Second, with respect to Inspection and Maintenance, STAPPA believes that the provisions of S. 768 are too complex. The association recommends that I/M only be mandatory for areas unable to attain the carbon monoxide or ozone deadlines by December 31, 1987, or for areas that have not achieved "Reasonable Further Progress."

Third, state air officials oppose the construction ban. The association believes that in instances where a state has either not submitted an adequate State Implementation Plan or not effectively implemented its plan, EPA should be required to promulgate and/or implement the state's air quality control program. However, if Congress elects not to eliminate the ban, we support the alternative "offset" approach contained in S. 768.

Fourth, we agree that the deadlines for attaining the National Ambient Air Quality Standards for all of the criteria pollutants should be extended. While we are not prepared to comment on the specific extensions proposed in the bill, we believe that the deadlines should be extended on a case-by-case basis in areas with severe and persistent air quality problems. If a deadline is extended, however, we recommend that the area be required to achieve additional emission reductions.

Finally, STAPPA concurs with the provisions of S. 768 that retain the growth allowance in nonattainment areas if certain conditions are met. These conditions, including an approved emissions inventory, BACT on 50 ton-per-year sources, and "Reasonable Further Progress," already are routinely administered by most states.

Interstate Transport/Acid Rain

STAPPA believes that most elements of the acid rain control program in S. 768 are appropriate. The association believes that acid rain is a serious problem and that steps should be taken now to begin controlling its adverse effects.

We recommend that Congress require an 8-10 million ton reduction of sulfur dioxide emissions by 1995 in the 31 states east of or contiguous to the Mississippi River. We suggest that the reductions be achieved in two phases. The first phase would begin immediately and would require that sulfur dioxide emissions be reduced by the amount

that could be obtained through the use of low-cost, readily available techniques such as coal washing, low-NO_x burners, least emissions dispatching, etc. The second phase would be accomplished by 1995 (or by 1990 if fuel switching is used) and would achieve the remainder of the 8-10 million ton reduction.

During Phase I, we suggest that the National Academy of Sciences conduct a study to determine whether the 8-10 million ton reduction or the regional designation (i.e., 31 states) should be altered. If, based on the recommendations of the NAS study, alterations appear to be necessary, EPA or Congress would have to make an affirmative decision to change the program. If no action is taken, Phase II would become effective automatically.

STAPPA agrees that each state's emission reductions should be based upon the state's percentage of utility emissions in excess of 1.5 lbs./mm BTU. We also agree that states should be able to select any reduction measures they desire, including early retirement, energy conservation, fuel switching, etc. By providing states full flexibility in determining how they meet their required reductions, the states will be better able to devise the most cost-effective strategies. This is an essential requirement for a program whose costs are estimated to be over $2 billion per year.

We support the requirement that states in the control region submit State Implementation Plans to EPA for approval. STAPPA suggests that each state be allowed eighteen months to revise its SIP and that EPA be given six months to approve each plan. In the event a state does not develop and implement an appropriate plan, we recommend that a federal standby plan be implemented in that state.

STAPPA's acid rain control recommendations differ from those in S. 768 in one key aspect--financing of the control program. Under our proposal, we recommend a funding mechanism to provide all or part of the capital costs of control required to meet reduction requirements beyond Phase I.

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STAPPA is concerned about the provision in Section 185 of S. 768 that penalizes states as a result of inaction by EPA. Section 185(b)(4) specifies that sources which are not in "full compliance with the applicable implementation plan for sulfur dioxide in effect on January 1, 1981" will be subject to certain penalties. Our concern is that prior to January 1, 1981, several states (including Michigan and North Carolina) proposed to revise their SO_2 SIPs to reflect more accurately attainment of the National Ambient Air Quality Standard. While in these cases the proposed revisions were less stringent than the existing federal SIP, the revisions, nevertheless, were legally acceptable. Unfortunately, these revisions were not acted upon by EPA in a timely manner, and, as a result, these states would be legally subject to the more stringent provisions (and penalties) under the bill. To address these concerns, STAPPA recommends that this provision be modified to exempt not only SO_2 SIPs in effect before January 1, 1981, but also SIPs proposed before this time and subsequently approved after this date.

STAPPA applauds the sponsors of S. 768 for strengthening the interstate pollution provisions of the act, particularly those in Section 110(a)(2)(E). We suggest, however, that the amendment not be restricted to criteria pollutants. Such a restriction may limit our ability to address problems that surface in the future.

Hazardous Air Pollutants

The members of STAPPA are dissatisfied with the existing hazardous air pollution control program under Section 112 of the Clean Air Act. We share the Committee's concern that amendments are necessary to improve the program and make it easier to regulate hazardous air pollutants in a more timely manner.

STAPPA and ALAPCO (our sister organization of local air pollution control officials) have formed a toxics policy workgroup in recent months in an effort to ascertain how the program can best be improved. The two associations offer these suggestions.

We believe the hazardous air pollution control program should consist of three components. The first component addresses the federal program and is intended to

strengthen the existing provisions of Section 112 by (1) simplifying the listing process so that EPA can identify hazardous air pollutants in a more expeditious manner, (2) requiring sources of listed pollutants to install "Best Available Control Technology" on both new and existing sources, (3) accelerating research on the degree of risk and methods for reducing risk to health posed by the listed substances, and (4) requiring EPA to issue guidance to states to assist in determining what additional controls, if any, are needed to protect the public. This approach should be used for pollutants which, in the judgment of EPA, are national in scope and require a national emission limit.

The second component of our proposal involves those pollutants that are deemed to be hazardous but are not national in scope. Perhaps only a few facilities throughout the country are emitting the pollutant in question in amounts that may be injurious to public health. For these pollutants, we recommend a "state referral system" that would allow state and local agencies, through a SIP-type process, to control these local problems. The state/local controls would be federally enforceable in the event EPA determines that the sources were not being regulated adequately.

The final component consists of expanded federal research and the development and implementation of an air toxics clearinghouse. State and local agencies need information on subjects such as risk assessment, acceptable ambient levels and technological remedies so that we can determine how to regulate air toxics. This information currently is not available. Increased research will enable our agencies to base their regulatory decisions on the most current information, and the air toxics clearinghouse will ensure that this information is readily accessible. STAPPA believes that the clearinghouse, coupled with more research, will provide an invaluable service. EPA has recently responded to our request to begin developing such a clearinghouse, but there needs to be a national commitment by Congress and the Office of Management and Budget to ensure that the clearinghouse on air toxics is adequately funded and maintained, and that research on air toxics is strengthened and expanded.

STAPPA believes its proposal will significantly improve the control of air toxics in the environment.

Mobile Sources

STAPPA believes that Title II of the Clean Air Act is fundamentally sound and that current vehicle standards have been demonstrated to be feasible, cost effective, and appropriate. We offer the following specific comments.

We believe it is unnecessary to grant waivers that would allow the nitrogen dioxide emission standard for light duty diesels to be relaxed to 1.5 grams per mile (g/m). Existing vehicles can meet 1.0 g/m and should continue to do so.

There is no need for an automatic four-year lead time for any change in heavy duty engine standards. EPA is best equipped to determine the necessary lead time on a case-by-case basis. This provision of S. 768 unnecessarily limits EPA's flexibility and may delay for several years EPA's current plan to require more stringent hydrocarbon and carbon monoxide standards for delivery vans and other medium-duty vehicles that contribute heavily to air pollution.

The provisions to limit the Administrator's discretion to define useful life for light and heavy duty vehicles is also unnecessary and damaging to state and local air pollution control efforts. Philosophically, we believe that emission controls should be designed to operate for the full life of a source, whether the source is a power plant or a motor vehicle. Many states are depending upon I/M to improve maintenance of vehicles and reduce emissions throughout the vehicles' lives. We are therefore concerned that the 50,000 mile useful life limit in S. 768 may undercut the effectiveness of I/M on older vehicles.

STAPPA also commends the Committee for the provisions that limit the use of lead in leaded gasoline. We are seriously concerned about ambient lead levels and leaded gasoline for several reasons. First, lead is highly toxic and leaded gasoline is a principal source of lead exposure in many urban areas. Second, the presence of lead also causes

other toxic pollutants, such as EDB, to be added to the fuel. Finally, the continued widespread availability of leaded gasoline at favorable prices encourages vehicle misfueling, which results in damaged catalysts and increased emissions of hydrocarbons, carbon monoxide and nitrogen oxides.

Funding Levels

The final point we wish to make concerns funding of state and local air programs. Section 105 of the Clean Air Act provides grants to state and local agencies for up to 60 percent of maintaining their air quality programs. Unfortunately, over the past five years, this federal support--in real dollars--has declined while state responsibilities and demands for services and resources have increased substantially.

Not only is this current trend of diminishing resources extremely disturbing, it is quite possible that unless the trend is reversed, the problem will exacerbate when Congress reauthorizes the Clean Air Act. Under the chairman's bill, for instance, the Congressional Budget Office has estimated that state and local air agencies will need an average increase of $15 million each year for the next three years. This estimate does not take into account additional responsibilities states will accept in the next few years as a result of increased delegation.

We know the Senate Environment and Public Works Committee is aware of our concerns and hope that you will work to ensure that these programs are adequately funded.

In conclusion, we appreciate the opportunity to testify on S. 768 and will be happy to work with you and your staff where we can be of assistance.

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STAPPA'S RECOMMENDATIONS

FOR

CHANGES TO THE CLEAN AIR ACT

February 1984

I. STATEMENT OF PRINCIPLES

The Clean Air Act, unlike many regulatory programs, affects the broad public interest. It has evolved from a long-standing national commitment to protect and improve the public health and welfare. The act is administered by a partnership of all levels of government that developed from more than two decades of experience.

The debate over the reauthorization of the Clean Air Act has involved many people with diverse interests and expertise. Some have articulated views that reflect a basic misunderstanding of the fundamental purpose, history and evolution of the nation's air program. The state air program administrators believe it to be both prudent and necessary to restate these fundamental principles:

Air pollution remains a continuing national health and welfare problem which imposes substantial social and economic costs on the American people.

> The primary goal of air pollution control programs throughout the country must remain the expeditious attainment of healthful levels of ambient air as defined by national health-based standards.
>
> More effort must be made to identify and limit the exposure of the public to airborne carcinogens, mutagens and other hazardous compounds.
>
> Pollutant levels must be reduced which cause damage to agricultural crops and natural resources even if these levels do not injure humans directly.
>
> Air quality deterioration must be kept to a minimum in areas of outstanding scenic and recreational value, such as national parks and wilderness areas.

An effective regulatory program administered by a partnership of federal, state and local governments is essential to achieving air quality goals.

> Administrative complexity and delay can be reduced by delegation of additional authority from the federal government to state and local governments.
>
> Effective federal oversight remains essential to carry out the national mandate to achieve air quality goals and to help resolve interstate and inter-regional pollution problems.
>
> Adequate federal technical and economic assistance to state and local air pollution control programs must be provided so that these agencies can carry out their responsibilities.
>
> Air quality goals cannot be achieved without the continued effective control of motor vehicles at the national level. Recent advances in automotive control technology must be maintained and where appropriate refined to provide greater durability.

The nation's air resources should be managed in a manner which, over time, minimizes the effect of control costs on the economy.

The use of the best control available on new and expanding sources remains a highly effective and necessary means of achieving air quality goals over time at reduced cost.

The way to achieve the greatest pollution reduction for the least cost is to administer air pollution control programs in a way that encourages technological and economic innovation and modernization by the private sector.

II. NATIONAL AMBIENT AIR QUALITY STANDARDS

Since 1970, the Clean Air Act has provided for the protection of the nation's health and welfare by requiring the EPA Administrator to prescribe primary and secondary National Ambient Air Quality Standards (NAAQS). These standards are the very heart of the act for they determine whether concentrations of the respective air pollutants are harmful to public health and dictate what strategies are necessary to attain and maintain these standards.

STAPPA believes that the federal government must be responsible for establishing the primary and secondary NAAQS. The primary standards must continue to be based strictly upon health concerns and set at levels which ensure that the public health is protected with an adequate margin of safety. The standards also must be national in scope to ensure equity among the states.

In order to guarantee that the National Ambient Air Quality Standards are based upon levels that are truly protective of health and welfare, STAPPA recommends that the Environmental Protection Agency devote a higher proportion of its resources for research on the standards.

III. NONATTAINMENT

As states assume greater responsibility under the Clean Air Act, they can and should be able to accommodate new growth in nonattainment areas in accordance with a policy of achieving net air quality benefits and ensuring reasonable further progress toward attainment of the standards.

STAPPA supports the establishment of deadlines for the achievement of ambient air quality standards. The Clean Air Act should contain a provision allowing EPA to provide an extension for areas with severe and persistent air quality problems. For an area to qualify for such an extension, further emission reductions would have to be implemented over time. Failure to implement such strategies successfully should result in federal sanctions, tailored to the magnitude and nature of the failure.

The Lowest Achievable Emission Rate (LAER) requirement for new sources in nonattainment areas limits economic development in urban areas without significant air quality improvement and encourages urban sprawl. All new sources larger than 50 tons per year should be evaluated equally under the Best Available Control Technology (BACT). The LAER concept should be dropped.

The current provisions for use of offsets and SIP growth margins should be retained.

IV. PREVENTION OF SIGNIFICANT DETERIORATION

STAPPA supports a strong program for preventing significant deterioration of air quality in clean air regions of the country. An effective program is necessary to protect air quality in national parks and wilderness areas. STAPPA is concerned, however, with several administrative aspects of the existing PSD program, particularly the increment system for Class II and III areas.

The Clean Air Act currently requires sources proposing to locate in a PSD area to demonstrate through preconstruction monitoring and modeling that the source's emissions will not exceed allowable increments or ambient standards. The act also requires air pollution control officials to track the consumption of the increments. These requirements present excessive administrative burdens without commensurate environmental benefits.

For these reasons, STAPPA recommends the following changes to the PSD program:

- eliminate all Class III increments;
- eliminate short-term increments for Classes I and II;
- retain Class II annual increments, but provide each state the option of eliminating their use after conducting a public hearing;
- extend the BACT requirement to all new sources emitting more than 50 tons per year;
- expand the PSD applicability threshold to new sources emitting more than 100 tons per year after control and to modified sources with aggregate increases of 100 tons per year;
- retain the current requirement that National Ambient Air Quality Standards may not be violated;
- eliminate mandatory pre-application monitoring and modeling except where the state determines they are necessary to demonstrate that NAAQS (or increments, where applicable) will not be violated; and
- include fugitive sources of criteria pollutants in emission totals (where quantifiable).

V. STATE IMPLEMENTATION PLANS

The State Implementation Plan (SIP) is a state's strategy for attaining and maintaining the National Ambient Air Quality Standards in the Clean Air Act. Each time a state revises its SIP, the revision must be approved at both the state and federal levels. This process has often proved to be lengthy and cumbersome, with great uncertainty over when EPA will give final approval to a proposed revision. To alleviate the problems with the SIP approval process, STAPPA recommends the following legislative and administrative changes:

- clarify the distinction between the informational and the enforceable elements of the SIP. Provide for recognition of state laws and other legal requirements without their becoming federal rules;

- modify the SIP revision process by giving recognition to state public participation and due process procedures that achieve the same ends as the federal Administrative Procedure Act procedures. Require EPA to participate formally in the state adoption process, and bind EPA to adhere to formal positions taken there unless new information or legal requirements (such as a court ruling) dictate otherwise. Allow retroactive application of new policies only under extreme justification;

- specifically provide that contact between state officials and EPA may be excluded from the ex parte prohibitions of the Administrative Procedures Act. (This may require an amendment to the APA, rather than the CAA);

- provide that short-term variances can be granted by the states without need for SIP approval if states meet certain substantive and procedural tests;

- make the effective date of SIP revisions retroactive to the effective date under state law;

- provide for deadlines on EPA review and approval action, with provision that failure to act constitutes approval;

- prohibit a priori judgements by EPA concerning state enforceability of SIP requirements as a basis for disapproval of SIP revisions;

- place the burden of proof on EPA to establish that effects of proposed SIP revisions claimed by the state as justification for the changes are in fact wrong, before such error can be used as a basis for disapproval;

- eliminate conditional approval as an available course of action. Use partial approval in its place;

- eliminate the permit moratorium as a sanction. Use federal promulgation (as currently mandated, but rarely done) to provide the incentive for state action; and

- accord federal recognition to state operating permits issued pursuant to rules and procedures contained in the SIP, making such permits federally enforceable, and thereby eliminating the need for individual site-specific SIP revisions.

VI. LONG RANGE TRANSPORT/ACID RAIN

Implementation of an overall, direct control strategy for long-range transported air pollution will require legal authority beyond that which currently exists in the Clean Air Act and most state air quality control laws. In order to provide a sound legal basis for the necessary control actions, it is recommended that the federal Clean Air Act be amended, particularly Sections 110 (a) (2) (E) and 126, to provide specific authority to deal with all long-range transported air pollution. The wording of this amendment of the Act should not be unduly specific as to the methods required to control such problems, which are still to be identified and understood.

In order to deal with the particular transported problem of acid rain, initial steps to reduce actual sulfur oxide and nitrogen oxide emissions should be aimed at the most cost-effective methods and obvious sources. Therefore, the Clean Air Act should:

- require designation of control regions for long-range transport problems;
- require establishment of near-term emission reduction target in the states east of or bordering the Mississippi River (Phase I) approximately equal to the reduction that could be obtained through use of relatively low-cost, readily-available techniques such as coal cleaning, least emissions dispatching, and low NO_x burners;
- establish a total 8-10 million ton reduction target (Phase II) in the states east of or bordering the Mississippi River from an established base year to be implemented by 1990 if fuel switching is used and by 1995 if other control programs are implemented;
- direct the National Academy of Sciences to conduct a study of whether the emissions reduction of 8-10 million tons or the regional designations should be altered. Acid rain problems in other portions of the U.S. shall also be studied. Such report shall be completed within three years of enactment of this act and shall be delivered to the Governors, Congress and the EPA Administrator;
- allow for mid-course corrections to the final reduction targets and regional designations on the basis of the NAS findings;
- allocate the total emission reduction target of 8-10 million tons to individual states based on a percentage of actual utility SO_2 emissions in excess of 1.5 lbs/mm BTU;
- allow reductions on a statewide, annual basis;
- allow interstate trading of reduction targets;
- allow states to select any reduction measures they desire including, but not limited to: least emissions dispatching, early retirement of sources, cost-effective retrofits, energy conservation investments, fuel switching and precombustion cleaning of fuels;
- require a federal standby plan that will be implemented in any state that does not develop and implement its own plan;
- allow each state up to 18 months to revise its State Implementation Plan (SIP) and to submit it to the Environmental Protection Agency. EPA must approve each SIP revision within six months of submittal. EPA's review shall be based on whether the state SIP revision will achieve the state's target;
- establish a funding mechanism to provide all or part of the capital costs of control required to meet any reduction requirements beyond Phase I; and
- require EPA to complete its New Source Performance Standards for industrial boilers to control sulfur dioxide from boilers with input greater than 50 mm BTU/hr.

To provide a better information base and to reflect the effects of acid rain, there should be expanded ambient acid deposition monitoring using standardized methods of sampling and analysis.

VII. PROGRAM FUNDING

STAPPA believes that an effective national clean air program requires a strong federal/state/local partnership. One aspect of this partnership is adequate federal support to states to carry out federally-mandated programs. Since the Clean Air Act was reauthorized in 1977, the program responsibilities of the states have increased dramatically. The states will continue to assume more responsibilities as EPA delegates additional programs and develops new standards and regulations. Between FY 1979 and FY 1984, however, federal support to the states has decreased each year in real dollars. This decrease in funding has forced many states to make significant cuts in their air quality programs.

STAPPA believes that states should be provided additional federal funds for implementing their air pollution control programs, in an amount commensurate with increased delegated responsibilities. STAPPA supports the current Section 105 grant mechanism in the Clean Air Act as the preferred alternative for federal support of state air programs. To ensure that air program objectives are not jeopardized, STAPPA opposes a switch to consolidated or block environmental grants unless there are sufficient safeguards against the transfer of air program funds to other programs. STAPPA also believes that EPA should be requested to provide for the association's involvement when the agency reviews various alternatives to 105 funding.

VIII. MOBILE SOURCES/INSPECTION AND MAINTENANCE

The Federal Motor Vehicle Control Program has proven to be an effective and necessary strategy aimed at reducing automobile-related pollutants. Available technology controls on carbon monoxide, nitrogen oxide and hydrocarbon emissions are needed to attain and maintain the National Ambient Air Quality Standards. Relaxations of mobile source emission standards could necessitate more stringent emission limits on existing stationary sources, as well as reduce the potential for future economic development.

STAPPA therefore recommends that the existing standards and schedule for light duty vehicle emission controls — established in the 1977 Clean Air Act — be maintained. These include the following:

Carbon monoxide — 3.4 grams/mile
Nitrogen oxide — 1.0 grams/mile
Hydrocarbons — 0.41 grams/mile

STAPPA also recommends that in the case of heavy duty vehicles, if it can be demonstrated that it is technologically infeasible to meet the existing schedule for emission controls, the EPA Administrator should be provided the authority to grant temporary waivers, and should set interim standards based on the best available control technology.

STAPPA recommends that a mandatory Inspection and Maintenance program be required only for those areas that either are unable to show attainment of the ozone or

carbon monoxide ambient air quality standards by December 31, 1987, or do not meet interim emission reduction milestones.

IX. REGULATION OF HAZARDOUS AIR EMISSIONS

One of the major environmental problems demanding immediate attention is the emission of hazardous air pollutants into the environment. While it is essential that the release of these hazardous air pollutants be controlled, the current national programs for regulating these emissions are not adequately developed. STAPPA recommends that Section 112 of the Clean Air Act be amended by incorporating the following principles:

- simplify the process for listing hazardous pollutants;
- require emission sources of listed pollutants to use control measures equivalent to best available control technology, as determined by the permitting agency. Provide a reasonable period to install such controls;
- accompany listing of a hazardous pollutant with accelerated federal research on the degree of risk and methods for reducing risk to health posed by the substance; and
- require EPA to issue guidance within two years of listing a hazardous pollutant, to assist states in determining what additional controls, if any, are needed to protect the public.

X. BUBBLE POLICY/APPLICATION TO NEW SOURCES

Federal courts have ruled that new source performance standards issued pursuant to Section 111 of the Clean Air Act must be applied to individual sources of pollutants, and therefore sources subject to such standards may not be allowed to emit in excess of those standards as part of a "bubble" or some other controlled trading arrangement. Proposals have been made to eliminate this constraint so as to allow alternative control strategies which will reduce emissions from existing sources with commensurate increases in allowable new source emissions.

Over the long term, application of best available control technology to individual new sources is a valuable element of the national program to restore and maintain clean air in all areas of our nation. The inclusion of new sources in alternative control programs will inevitably undercut and render less effective the pollution prevention inherent in source-by-source application of best available control technology.

Consequently, STAPPA opposes any change to the Clean Air Act which would allow individual new sources or equipment to be constructed without the application of best available control technology.

XI. ENFORCEMENT

STAPPA supports the development of a strong, cooperative working relationship between the Environmental Protection Agency and each state agency. The relationship should be based upon a foundation of trust, teamwork, and cooperation, and the principle that the control of air pollution at its source is the primary responsibility of the states.

Program activity should be characterized by supportive and non-duplicative actions that do not undermine the authority of a state and recognize that the manner in which compliance is enforced will vary from state to state.

Specifically, STAPPA recommends the following:

- amend Section 113 of the Clean Air Act to expressly allow federal and state agencies the right to use administrative enforcement orders to correct non-complying situations which can be corrected within 12 months time;

- reconsider the need for Section 120 — noncompliance penalties;

- amend Section 114 of the Act to prohibit EPA from unilaterally conducting inspections of sources, unless EPA has informed a state that EPA has reason to believe a state cannot or will not implement its own program, or unless EPA has found the state inspection program to be inadequate. EPA should be required to give the state at least 30 days prior notice of an audit of the state program. The audit should involve inspections or source tests and should provide for state and/or local participation;

- require EPA to conduct periodic audits and informal liaison visits to each state agency for the purpose of information transfer and evaluation of the effectiveness of a state's program. The information transfer should include: (a) technical advice provided by a BACT clearinghouse, (b) enforcement techniques, such as the correct use of enforceable permit conditions, and (c) the use of proper inspection and source test techniques; and

- require EPA to develop and provide to the states a detailed procedure on how EPA would maintain the security of confidential information submitted to them.

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Responses from Mr. Wood, on behalf of STAPPA,
to questions of Senator Stafford
(February 24, 1984 Clean Air Act Hearing)

1. EPA has brought to the Committee's attention the fact that 120 days may not be enough time for EPA to review major SIP revisions. They include in the category of "major" revisions those necessitated by a revised ambient standard.

Do you agree that there may be some types of SIP submittals where the 120-day, automatic approval provision might not be enough time for EPA evaluation?

Generally, state air pollution control officials believe that 120 days should be sufficient time for the Environmental Protection Agency to review most revisions to State Implementation Plans. However, there may be instances, particularly SIP revisions necessitated by a revised National Ambient Air Quality Standard, where EPA should have additional time. This may be necessary, for example, when EPA promulgates its PM_{10} standard and the agency is deluged with major SIP revisions from most of the states. In these and other instances, though, we still believe that EPA should be subject to an outside deadline (i.e., 60 additional days) to force the agency to act in a timely manner.

2. With respect to hazardous air pollutants, can you tell me if all States have the authority to regulate these pollutants even if EPA has not declared certain ones to be hazardous? Are some States constrained to wait for EPA to act before they can act?

STAPPA surveyed its members two years ago to determine whether their agencies were precluded by state law or policy from adopting state regulations more stringent than federal regulations. Approximately one-half of the states responded that they are constrained to some extent from adopting regulations more stringent that federal rules. Based upon a more recent survey conducted by STAPPA of state and local air toxics programs, our association found that several states' toxics programs were subject to these same constraints. While a number of states are currently developing air toxics programs, EPA could enhance their efforts by publicly identifying appropriate substances to regulate and providing information on risk assessment and risk management.

3. You propose a three-tier program to control hazardous air pollutants. In your second tier -- "the State referral system" --

who would determine the standard of protection that is to be achieved by the polluting facilities? Congress? EPA? or the States?

Under our "State referral system," we believe that the states should ultimately make the final decision concerning the standard of protection that is to be achieved by facilities. However, in making their decisions, the states must rely extensively upon the technical expertise of EPA and other federal agencies. The Air Toxics Clearinghouse that we propose will assist states in making these decisions.

4. Can you comment on the regulatory package EPA published on November 16, 1983, to regulate emissions from heavy-duty trucks? Do you believe those requirements adequately regulate emissions from both gasoline and diesel heavy-duty trucks?

While STAPPA has not performed an extensive analysis of EPA's November 16, 1983 regulatory strategy for heavy-duty trucks, the proposal appears to be reasonable. The strategy embodied in the proposal is based on several assumptions, however, including an EPA staff estimate that the market for the larger engines is shrinking. To the extent that this assumption holds true and that air quality demands do not require additional measures, the regulations are appropriate. STAPPA would recommend, though, that EPA reevaluate the rules (and assumptions) periodically and make corrections, when necessary.

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Testimony of

Donald Arkell, President

on behalf of the

Association of Local Air Pollution

Control Officials

(ALAPCO)

on S. 768

Amendments to the Clean Air Act

before the

Senate Environment and Public Works Committee

February 24, 1984

32-439 O - 84 - 8

TESTIMONY OF

DONALD ARKELL, PRESIDENT

ASSOCIATION OF LOCAL AIR POLLUTION CONTROL OFFICIALS

ON S. 768, AMENDMENTS TO THE CLEAN AIR ACT

PRESENTED TO THE

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

FEBRUARY 24, 1984

Mr. Chairman and members of the Committee, my name is Donald Arkell and I am the Director of the Lane Regional Air Pollution Authority in Eugene, Oregon. I am appearing here today on behalf of ALAPCO--the Association of Local Air Pollution Control Officials--where I serve as President. We appreciate this opportunity to testify on S. 768, amendments to the Clean Air Act.

ALAPCO is a national organization representing air pollution control programs in more than 100 major metropolitan areas in the U.S. These local programs are responsible for protecting over 94 million people from the adverse effects of air pollution.

The members of our association compliment the chairman and members of this committee for their dynamic leadership in air pollution control over the years and for the urgency they attach to reauthorizing the Clean Air Act. ALAPCO believes that revisions to the act are long overdue. We hope that Congress can resolve its differences so that local air pollution control officials can devote their resources to improving the quality of air in the most effective and efficient manner.

The members of ALAPCO have developed a set of legislative and administrative recommendations for changes to the existing air pollution control program and I have attached a copy of our recommendations to my formal statement. I would appreciate your including this policy statement in the hearing record.

Our specific comments on S. 768 follow.

National Ambient Air Quality Standards

ALAPCO agrees with the chairman's bill that requires EPA to continue to set national primary and secondary ambient air quality standards. Primary standards should be based solely on health considerations. We think that the balancing of public health and costs should occur when emission limits and timetables are established as part of regulatory strategies. ALAPCO supports the bill's treatment of secondary standards. Our position is that secondary standards should continue to be set at the national level, but that a reasonable balance be struck with other considerations.

State Implementation Plans

ALAPCO appreciates the chairman's efforts to expedite the approval process for State Implementation Plans. We share many common experiences with state agencies in coping with lengthy SIP reviews. It is not uncommon, for example, for a local agency, through its own administrative procedures, to award a short-term, noncontroversial variance to an industry. Under the Clean Air Act, however, local agencies must submit even these requests to EPA for approval. This federal approval process has proven to be ineffective. By the time the review has been completed at the federal level, oftentimes the variance has expired and the facility has returned to compliance.

ALAPCO generally supports the provisions of the bill allowing automatic approval of SIPs. This provision will ensure that EPA will act more quickly on major SIP revisions. However, we are concerned with the provisions of the bill that disallow automatic approval where objections have been filed. This creates the possibility that local and/or state agencies may continue to wait an inordinate amount of time for EPA to dispose of an objection. We agree that EPA should be granted additional time to review an objection, particularly if the complaint is substantive and is initiated at the local level. However, we suggest that there be a deadline for EPA to act, beyond which the SIP becomes automatically approved.

New Source Permits

Under the Clean Air Act, a new or modified facility is regulated under a complex set of rules, including New Source Performance Standards, nonattainment and Prevention of Significant Deterioration provisions, and other new source review requirements. ALAPCO believes that the Clean Air Act should be amended to provide a concise and integrated policy for regulating these facilities. The association recommends that a new or modified source:

- o be defined as any individual process or activity capable of emitting an air pollutant;
- o install Best Available Control Technology (BACT) if it emits more than 50 tons per year; and
- o be prevented from "netting" out of new source review requirements, such as BACT.

For nonattainment areas, ALAPCO also recommends that offsets continue to be required.

For PSD areas, ALAPCO recommends eliminating short-term increments in Class I, but only if an alternative tracking system, such as a longer-term increment, is required. The association also recommends deleting the increment system for Classes II and III, provided permitting agencies require BACT on sources emitting more than 50 tons per year and EPA sets secondary ambient air quality standards.

Local air pollution control officials generally do not support mandatory pre-construction monitoring requirements. However, for "unclassified" areas, i.e., areas that do not have adequate ambient data to determine whether they should be considered PSD or nonattainment, preconstruction monitoring should be mandatory.

Since fugitive emissions may comprise a significant portion of a facility's total emissions, they should be considered when determining how a facility should be controlled. Fugitive emissions should be regulated to the same extent as pollutants emitted from stacks.

ALAPCO agrees with S. 768 that facilities which comply with BACT should not be required to adopt more stringent controls for some period of time. However, the ten-year period contained in the bill may be too long. This provision could undercut state programs that have a five-year "no retrofit" requirement. ALAPCO suggests that the bill limit the retrofit requirement to five years and allow extensions on a case-by-case basis.

Hazardous Air Pollution

ALAPCO believes that controlling toxic air pollutants is the most critical air quality issue facing this nation. Citizens are demanding that we take action now, particularly to control smaller sources that ordinarily would go unregulated under the federal program. Local air officials simply cannot wait until EPA identifies a pollutant as hazardous and sets emission limits under Section 112. We need a stronger commitment from the federal government for technical assistance to provide research and risk assessment data that can be used by state and local agencies. Adequate funding of the air toxics clearinghouse will help fill that need.

ALAPCO believes that local and state air agencies can assist EPA and Congress in controlling air toxics. We can be most effective if Congress explicitly recognizes a comprehensive federal/state/local strategy—one that would accelerate the federal effort and provide an extensive data network to assist our agencies in addressing local problems.

Noncompliance Penalties

While ALAPCO believes that noncompliance penalties can be an effective enforcement mechanism, we are dissatisfied with the existing provisions under Section 120 of the Clean Air Act. These provisions can be improved through the following changes.

First, the system should be mandatory, with few exceptions. Second, the method for calculating penalties should be simplified. We suggest either an excess emission fee schedule or a prescribed daily penalty. Third, the penalty ceiling should be eliminated. Lastly, smaller sources, particularly those emitting hazardous air pollutants under Section 112, should be subject to the penalties.

Deadlines/Sanctions

ALAPCO supports the bill's intent to extend the deadlines for attaining the National Ambient Air Quality Standards. There are several areas in this country that are unable to meet the existing deadlines, notwithstanding the fact that they have adopted all reasonably available control measures.

When areas fail to meet appropriate deadlines and are not implementing the controls required of them, we believe that sanctions should be imposed. However, ALAPCO recommends that sanctions be tailored in some manner to the magnitude and nature of the violation.

Mobile Source Controls

ALAPCO strongly recommends that the existing federal motor vehicle control program be retained. To the extent standards are relaxed, local officials will be forced to compensate by further controlling stationary sources. Since the technology exists for meeting the current motor vehicle standards, a change in the program will result in inequitable and less cost-effective controls on stationary sources.

Funding

Finally, I would like to alert the Committee to the funding crisis that local air programs are facing. As federal and state resources are being cut, so are local sources of funding. Local agencies, which rely on federal and state funds to assist in financing their programs, seem to be bearing the brunt of these cuts. As a result, several local agencies have shut down over the past three years due to lack of resources. We hope that the Committee will continue to work toward ensuring that local agencies receive sufficient funds to meet their federal mandate under the Clean Air Act.

Thank you for this opportunity to testify. I will be happy to answer any of your questions.

ALAPCO'S Position Paper on the CLEAN AIR ACT

ASSOCIATION OF LOCAL
AIR POLLUTION CONTROL OFFICIALS

INTRODUCTION

The Association of Local Air Pollution Control Officials (ALAPCO) is a national organization representing air pollution control programs in over 100 major metropolitan areas in the continental U.S. These local programs are responsible for protecting the health and welfare of over 94 million people from the hazards of air pollution.

ALAPCO endorses the goals and objectives of the Clean Air Act (the Act) and strongly supports its reauthorization. The Act has proven to be worthy and effective legislation which has fostered laudable gains in achieving and protecting a valuable natural resource – clean air. Maintaining healthy air quality is essential to the welfare of our nation.

While ALAPCO endorses the objectives of the Act, we believe that the implementation of the legislation can be improved through both administrative changes within the U.S. Environmental Protection Agency (EPA) and legislative amendments to the Act. These revisions should clearly recognize that state and local governments have primary responsibility for the protection of public health and welfare. We are convinced that an effective air program can best be achieved through a strong national directive supported by the federal government, but implemented and enforced by state and local governments.

As members of ALAPCO, we believe that our positions on the Clean Air Act represent the best interests of communities across the nation. We are committed to achieving healthy air quality for all citizens.

I. NATIONAL AMBIENT AIR QUALITY STANDARDS

Recommendations:

- Continue to allow EPA to establish primary and secondary national ambient air quality standards (NAAQS); and

- Continue to develop primary NAAQS on the basis of health concerns, without consideration of costs.

The Clean Air Act provides for the protection of the nation's health and welfare by mandating in Section 109 that the EPA Administrator prescribe national primary and secondary ambient air quality standards. ALAPCO supports the concept of national health and welfare-based standards established by the EPA. We recognize that the NAAQS are the very heart of the Act.

The establishment of primary air quality standards should be solely related to health concerns without consideration of costs or the ability of a given area to attain the air quality standards.

Secondary air quality standards should also be national in scope and established by EPA. Areas which are not attaining the secondary ambient air quality standards should be permitted a reasonable time to achieve compliance with these standards.

Under existing law, state and local governments may adopt primary and secondary ambient air quality standards which are more stringent than the national goals in order to protect localized environmental, property or human values. This option should be retained. However, ALAPCO opposes any recommendation that state and local governments be provided the authority to establish secondary standards in lieu of, or which would supersede, the nation-wide goals. State and local governments, at this time of budgetary reduction and restraint, do not have the necessary funding and support

to conduct independent, scientifically valid studies. In addition, if state and local governments are allowed to adopt secondary standards in lieu of uniform federal standards, severe equity problems could result.

II. STATE IMPLEMENTATION PLANS (SIPs)

Recommendations:

- Retain SIP concept, but provide greater flexibility for state and local agencies;
- Amend Section 110 to provide that local governmental bodies may adopt and implement individual implementation plans;
- Accord federal recognition to state and local operating permits, making them federally enforceable, and thereby eliminating the need for individual site-specific SIP revisions;
- Provide for automatic approval of SIP revisions when EPA fails to take action within a specified period of time;
- Allow for short-term variances to be granted by state/local agencies – without need for SIP approval – if certain tests are met; and
- Tailor sanctions to the magnitude of the failure.

The current SIP concept mandated under Section 110 of the Clean Air Act, while promising to permit dual federal and state enforcement of air regulation, has developed into a cumbersome and burdensome process that continues to provide relatively smaller returns with each increasing demand that is placed upon the regulatory framework. While ALAPCO fully supports retention of the SIP concept, we recommend that the Act be amended in order to lessen the burden of the

current process and to free air officials for other endeavors.

Section 101(a)(3) of the Act recognizes that the prevention and control of air pollution at its source is the primary responsibility of state and local governments. However, the implementation plan process called for under Section 110 recognizes only the states' authority to adopt and implement regulations, even though state law often grants local government this responsibility. The State Implementation Plan process has been established in spite of the fact that local air pollution control agencies are, in many instances, responsible for the basic elements of these plans (i.e., inventories, air monitoring, stack testing, model analysis, coordination with local elected officials and transportation/land use planning). Section 110 of the Act should be amended to clarify that local governmental bodies may adopt and implement individual implementation plans. These SIPs should be separate and apart from state review, where permitted by state law, in consonance with Section 101 of the Act.

ALAPCO has not yet taken a position on the concept of emission fees and certain other forms of market place control (i.e., marketable permits) as a means of air pollution regulation, although some cities within ALAPCO's membership, such as Philadelphia, Pennsylvania, have undertaken serious studies of the emission fee concept. However, the Act as currently construed by EPA would not permit the implementation of such a concept on even a trial basis because of the limitation of Section 110(a)(2)(B) which provides that SIPs must contain "emission limitations." A fee system might not have source specific emission limitations that would meet the classical definition of the term. ALAPCO would therefore support an amendment to the Act that permits the use of such innovative regulatory mechanisms on a trial basis in order to demonstrate whether the concept could have an effective application to the air control effort.

Under existing law, economic sanctions and growth sanctions (i.e., permit moratoriums) may be imposed on state and local governments for failure to submit SIPs and revisions by established time frames or meet designated attainment deadlines. Penalties imposed for failure to meet these deadlines are often disproportionate to the violation. This inequity is further compounded by the fact that these deadlines are frequently unrealistic.

ALAPCO suggests that Congress give the EPA Administrator authority to tailor sanctions to the magnitude and nature of the failure. Thus, the harsh penalties of loss of funding and growth moratoriums may not be necessary.

Lastly, in order to make the SIP process more meaningful and effective, ALAPCO urges that the Act be amended as follows. These recommendations, as modified, are consistent with certain recommendations of the State and Territorial Air Pollution Program Administrators (STAPPA):

(1) Clarify the distinction between the informational and the enforceable elements of the SIP. Provide for recognition of state and local laws and other legal requirements without their becoming federal rules;

(2) Modify the SIP revision process by giving recognition to state and local public participation and due process procedures which achieve the same ends as the federal Administrative Procedure Act (APA) procedures. Require EPA to participate formally in the state adoption process, and bind EPA to adhere to formal positions taken there unless new information or new legal requirements (such as a court ruling) dictate otherwise. Allow retroactive application of new policies only under extreme justification;

(3) Specifically provide that contact between state or local officials and EPA may be excluded from the ex parte prohibitions of the APA. (This may require an amendment to the APA, rather than the CAA);

(4) Provide that short-term variances can be granted by the states and locals if they meet certain substantive and procedural tests, without need for SIP approval. (See ALAPCO position on Enforcement); and

(5) Provide for deadlines on EPA review and approval action, with provision that failure to act constitutes approval.

III. ATTAINMENT DEADLINES

Recommendations:

- Extend existing air quality attainment deadlines by statute; and
- Provide EPA Administrator the discretion of further extending deadlines on a case-by-case basis when good cause is shown.

Existing air quality attainment deadlines have been unrealistic and should be extended. Local officials simply have not had adequate time to develop effective State Implementation Plans and implement necessary controls to attain the standards within the statutory deadline of the Act. Moreover, monumental national efforts to assemble and review SIPs on a tight time schedule, without any recognition of the state and local requirements for approval, have led to plans which are in some instances unsupportable and merely demonstrate compliance "on paper."

The extended attainment deadlines should be established by statute, with provision that the EPA Administrator be granted the authority, after notice and opportunity for public hearing, to extend the deadline beyond this date on a case-by-case basis. Criteria used by the Administrator in considering extensions should also be specified in the Act. One such criterion would be a demonstration by the affected jurisdiction that it has made a "good faith effort" to implement all

reasonable and available strategies during the period prior to the request for extension.

If and when an extension is granted, the Administrator should be required to confer with state and local officials of the affected jurisdiction to determine a revised attainment deadline for the area. Once a new deadline is established, the Administrator, again after consulting with state and local officials, must identify suitable control measures for the affected jurisdiction. The attainment status of the area should be reviewed every year to insure reasonable progress is being made toward the extended deadline. If reasonable progress is not being made, additional controls should be required.

IV. NEW SOURCE CONSTRUCTION AND REVIEW

Recommendations:

- Integrate concepts of New Source Review for greater consistency;
- The term "source" should be defined as any individual process or activity capable of emitting an air pollutant;
- Netting should not be allowed to avoid any New Source Performance Standard, Section 173 requirement, or BACT application;
- Fugitive emissions should be included in all applicability determinations; and
- Insure that requirements do not unnecessarily skew growth toward rural areas.

The Clean Air Act should provide a concise and clear policy on construction of new sources. The current review process is confusing, time and manpower intensive, and in some instances excessively expensive for the proposed facility and the reviewing agency. Provisions on construction of new sources are found in

at least three different sections of the Act and there is no central plan or process. The new source provisions of the New Source Performance Standards (NSPS), non-attainment and PSD sections (discussed separately below) overlap in such a way as to allow the possibility that a new source may be required to meet all three legislative provisions at one location. This lack of central new source planning has led to confusion in the siting and permitting requirements of new sources.

The new source construction provisions of the Act should be integrated under one central concept so that the basic elements of new source construction and modification are consistent. Once this has been accomplished, efforts should be focused on establishing a streamlined permit review and analysis process that will adequately protect the traditional values upon which the separate concepts of NSPS, PSD and non-attainment construction permit requirements were adopted.

ALAPCO believes that the new source review process, through the establishment of modern, well-controlled sources, is a vital element in the plan for clean air. To accomplish this future we must assure that all new sources emitting more than 50 TPY install the best available control technology at the time of source installation. Therefore, we feel that the term source must be process-specific, and "netting out" of NSPS, Section 173 requirements, or BACT application must be specifically disallowed. Additionally, we feel that fugitive emissions must be included in all applicability determinations, so that all real emissions to the ambient air can be accounted for in the review process.

ALAPCO is also vitally concerned that economic growth could become unnecessarily skewed toward rural clean air areas. ALAPCO favors strong and effective clean-up efforts in the nation's cities, but care must be taken to insure that the Act does not cripple the ability of urban areas to compete for new industry. This issue must be a major consideration in the adoption of any new source policy (see discussion on PSD).

A. NEW SOURCE PERFORMANCE STANDARDS

Recommendations:

- Make NSPS limitations effective at time of final promulgation; and
- Protect new sources and major modifications from retrofit requirements for a specified period of time.

Past experience has demonstrated that EPA has been ineffective in promulgating NSPS emission limitations in a timely fashion. ALAPCO recommends that NSPS limitations become effective at the time of final promulgation; otherwise, sources and reviewing agencies are left in confusion over applicable emission limitations between the time of the rule proposal and final promulgation. Some significant judicial burden should be placed upon challenging parties so that the effective date of final rules are not needlessly delayed by litigation. Making NSPS limitations effective upon the date of final promulgation would also provide an incentive for EPA to publish the final limits in a timely fashion.

New sources or major modifications should be protected from retrofit requirements for a specified period of time, except where additional controls are necessary to achieve the requirements of newly designated criteria or hazardous pollutants. The NSPS limitations should be reviewed periodically on a basis established by Congress.

B. PREVENTION OF SIGNIFICANT DETERIORATION

Recommendations:

- Eliminate the increment system in Class II and Class III areas, provided secondary standards are set by the Federal Government;

- Delete short-term increments in Class I, provided an alternative tracking system is utilized;

- Require pre-construction monitoring before siting new sources in unclassified areas;

- Apply BACT to new sources emitting (after control) more than 50 tons per year; and

- Allow for BACT to be more stringent than NSPS.

Recommendations for the PSD program should be considered as a package.

ALAPCO recommends eliminating the increment system in Class II and Class III areas. Properly adopted secondary NAAQS coupled with strict technology standards should be sufficient to protect the public welfare from the known or anticipated adverse effects of particular pollutants. State and local governments should retain their authority to implement some type of incremental tracking system if they so desire.

Short-term increments in Class I areas should also be deleted provided an otherwise appropriate tracking system can be developed. If no other viable tracking system is appropriate, then Class I short-term increments should be retained.

ALAPCO is extremely concerned that distinctions between the PSD legislation and the permitting requirements for nonattainment areas (i.e., offset requirements) may lead to (1) the displacement of sources in urban areas to unclassified areas (for criteria pollutants), and (2) the inability of urban areas to effectively compete for new industry. Such displacement could contribute to the existing problems of urban sprawl and economic deterioration of inner-city areas. Unclassified areas located adjacent to nonattainment areas are particularly attractive to new sources anxious to draw upon an existing supply of capital, resources, manpower

and transportation, without the concerns of urban taxes and sophisticated government. ALAPCO believes that many of the unclassified areas may indeed be nonattainment, particularly for transported pollutants. Therefore, ALAPCO recommends that the Act require monitoring prior to the siting of new sources in unclassified areas. Otherwise monitoring and modelling requirements should be determined by state and local programs on a case-by-case basis.

ALAPCO also recommends that Best Available Control Technology (BACT) be applied to control any given pollutant at a new source which has the potential to emit (after control) 50 tons per year of that pollutant in PSD areas. Further, BACT should not be equated to NSPS, as New Source Performance Standards have frequently been translated into the "lowest common denominator" for many industrial categories.

C. NONATTAINMENT AREAS

Recommendations:

- Delete LAER and substitute in its place, BACT;
- Apply BACT to new sources emitting (after control) more than 50 tons per year;
- Retain the offset requirements for new sources in all portions of nonattainment areas; and
- Disallow the use of specialized funds to substitute for offsets.

ALAPCO recommends that Best Available Control Technology be required in lieu of Lowest Achievable Emission Rate (LAER) for new sources locating in nonattainment areas. This requirement, which would apply to sources emitting (after control) greater than 50 tons per year of a given pollutant, would help to

alleviate our concern over the present law's potential for depriving metropolitan areas of new source growth.

Studies have shown that the air quality benefits from the application of BACT are nearly identical to those achieved from LAER. Furthermore, requiring BACT in nonattainment areas will encourage technological development and increasingly tighter emission limitations as new sources are constructed. In addition, the technology-forcing aspects of offset requirements will be a driving force in improving and tightening the BACT limitations across the country.

ALAPCO supports the retention of the offset requirement for major sources in all parts of nonattainment areas, including both rural and urban locations. ALAPCO does not support the use of a specialized fund for air quality improvements contributed by new sources unable to locate offsetting emissions.

V. ENFORCEMENT

Recommendations:

- Amend Section 113 to define the enforcement role of EPA as one of oversight and audit;
- Provide EPA authority to intervene where states/locals fail to act; and
- Allow state and local agencies to issue administrative orders (i.e., variances) for up to one year.

Along with the difficulties experienced in the development of a State Implementation Plan are the problems involved in implementing the SIP. There is an overwhelming consensus among the local air agencies that EPA has exceeded the original intent of its charter through direct involvement in state programs and through independent enforcement activities. In many instances this intervention may needlessly supersede

the activities of state and local programs. The regional offices of EPA have used the SIP process to become overly involved in the day-to-day activities of air pollution control.

ALAPCO recommends that Section 113 of the Clean Air Act be amended to clarify that EPA's primary responsibility should be to act in an oversight or audit role relative to SIP enforcement. Dual jurisdiction should be retained, however, so EPA can take enforcement action where state and local programs either fail to act or are unable to act. This is consistent with the intent specified in Section 101 that the prevention and control of air pollution at its source is the primary responsibility of state and local governments. Federal financial assistance and leadership should act as the underpinnings of an effective enforcement effort.

Section 113 of the Act should also be revised to clearly provide that state and local agencies may issue administrative orders (i.e., variances) for up to a one year period, in order to allow a source to come into final compliance with a State Implementation Plan. Such an amendment should be adopted without the mandatory requirement that noncompliance penalties be assessed during the time the order is in effect. The variance authority should also apply to the extension of interim compliance dates for sources where no extension of the final compliance dates is necessary. As with the SIP recommendation above, it is envisioned that a procedure could be established which, if followed by the state or local agency, would be federally enforceable without requiring a site-specific SIP revision.

VI. NONCOMPLIANCE PENALTIES

Recommendations:

- Existing Section 120 of the Clean Air Act is unworkable and therefore unacceptable to ALAPCO;

- ALAPCO considers noncompliance penalties to be an effective enforcement mechanism and favors a continuing requirement for such penalties in the Clean Air Act;

- The application of such penalties should be mandatory, with only very narrow, specific exemptions for violations such as control equipment malfunctions, acts of God, and circumstances clearly beyond the control of the source owner;

- The current method of basing noncompliance penalties on the actual costs of compliance avoided is too complex and has caused the current program to fail. ALAPCO favors a more simplified manner of determining noncompliance penalties and suggests either an excess emission fee schedule or a prescribed daily penalty;

- No penalty ceiling should be established;

- All sources violating Section 110 and 111 emission limits and/or compliance schedules with actual emission rates equal to or exceeding 25 tons per year, and all sources violating Section 112 emission requirements should be subject to noncompliance penalties; and

- The term "source" should be defined as any individual process or activity capable of emitting an air pollutant.

Section 120 of the Clean Air Act Amendments of 1977 provides for the nondiscretionary collection of penalties from major stationary sources not in compliance with Section 110, 111, or 112 emission limits or compliance schedules after July 1, 1979. Such penalties are to be based on the actual costs associated with noncompliance by such major sources. States may request and receive a delegation of authority to enforce federal rules, or adopt state rules, so as to collect

noncompliance penalties. The federal noncompliance penalty rules promulgated pursuant to Section 120 are a comprehensive set of requirements that includes highly complex economic models and computer programs, lengthy administrative appeals processes, and very costly (and probably unrealistic) monetary penalties. ALAPCO believes that the incorporation of the seven recommendations above will make noncompliance penalties a more viable enforcement tool.

VII. GRANTS FOR THE SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS

Recommendations:

- Provide greater funding to state and local agencies under Section 105, commensurate with increased delegation of authority; and

- Amend Continuing Eligibility Limit requirement to relieve pressure on local funding.

When Congress authored the Clean Air Act, they obviously foresaw the importance of local agencies as a first line of effort. Section 101 (a)(1) acknowledges that "...the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas." Section 101 (a)(3) further establishes that the "...prevention and control of air pollution at its source is the primary responsibility of states and local governments." The intent of Congress has been realized; today there are over 215 local air pollution control agencies serving metropolitan areas with population in excess of 94 million people.

The establishment and maintenance of local air pollution control programs is due in large measure to the financial provisions of the Clean Air Act. Section 101 (a)(4) plainly states that federal financial assistance is essential to the development of local programs. This position is further reinforced by Section 105 which

provides for between 50 to 60 percent of the cost of maintaining state and local control programs.

Many local air pollution control programs benefit from Section 105 provisions by obtaining direct federal grants. These grants have proved useful to both participants: local agencies receive information on yearly federal priorities, and EPA gains insight to how air pollution control efforts are carried out at the most fundamental level. Thus, the elimination of these direct grants, and subsequent consolidation to the state level, has negative implications for federal/local understanding. These implications go beyond possible changes in the amount of funding individual local programs receive. Therefore, the direct grant mechanism should be retained.

The benefits of a local enforcement program are obvious: a more complete understanding of local industry and its role in the community; prompt and comprehensive review of applications for permits for new and existing air pollution sources; operation and maintenance of comprehensive ambient air monitoring networks; better interface with land use and transportation planners; more responsiveness to citizen complaints; and superior surveillance. Without local feedback and input, much of the progress which has been made under state and federal programs would not have been possible.

It is, therefore, essential that the Clean Air Act reaffirm its support of local air pollution control programs. The strongest affirmation would be a strong commitment to continued financial assistance which is commensurate with increasing delegation of authority to state/local programs. It is not (and should not be) the intent of the Clean Air Act to phase out, or significantly restrict the funding to this vital aspect of our national effort to achieve clean air.

It is recognized that Section 105(b) is designed to maintain an acceptable level of commitment by state and local air agencies. The formula for assuring state

and local commitment, as specified in Section 105(b), in effect does not allow a state or local agency to expand certain program features for even a temporary period unless the agency reduces expenditures in some other program area or makes an indefinite commitment to an increase in total level of activity. ALAPCO believes some additional flexibility should be allowed state and local agencies to vary, within specified limits, their total program expenditures as individual needs dictate.

It may be appropriate for the Act to be amended in a way that would be consistent with Section 106(d) of the Federal Water Pollution Control Act, which relies upon a provision that non-federal expenditures must at least equal a base year established in the Water Pollution Control Act. This approach would allow state and local officials to vary funding from year to year in response to established priorities, and yet permit EPA to insure that sufficient funds have been provided for air pollution control.

VIII. MOBILE SOURCES

Recommendations:

- Retain existing mobile source controls; and
- Remove the mandatory requirement for transportation control measures under the Clean Air Act.

There is unequivocal support among ALAPCO members for an effective control program over new moving sources. No other strategy for controlling mobile source emissions has produced reductions of hydrocarbons comparable to those obtained under the Federal Motor Vehicle Control Program (FMVCP).

If new motor vehicle performance standards are relaxed, state and local officials will be faced with the unacceptable alternatives of either obtaining the lost hydrocarbon reductions from less effective mobile

source strategies, or adopting more stringent point source emission requirements. Neither of these options provides the national uniform benefit comparable to that provided by the FMVCP.

Additionally, the FMVCP plays a significant role in reducing carbon monoxide emissions in those cities where this pollutant is a problem.

Transportation planning efforts to date under Sections 174 and 175 of the Clean Air Act have been ineffective in producing significant new reductions. These reductions would have been achieved without the mandate of this program. Generally, transportation planning has not lived up to its initial expectations because metropolitan planning organizations (MPO's) have maintained their primary allegiance to traditional transportation planning programs and agencies. Since Section 109(j) of the Federal Highway Act requires that transportation plans and programs at the local level must be consistent with the SIP, air quality planning required by Sections 174 and 175 of the Clean Air Act is often merely a federally mandated overlay to regular responsibilities.

ALAPCO favors removal of transportation planning as a requirement of the Clean Air Act. MPO's should still perform annual emission inventories of mobile sources, while taking into account any Transportation Control Measures (TCM's) which may have been implemented for reasons other than air quality improvement (such as energy conservation or congestion relief). The planning requirements for TCM analysis under highway and transit legislation should be emphasized and strengthened. The resultant reductions can still be accounted for in SIP development and tracking.

Any special work required above and beyond the normal transportation planning process should be fully funded through a procedure consistent with the Section 105 grant mechanism currently available to local and state programs.

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IX. INTERSTATE TRANSPORT

Recommendations:

- Strengthen Sections 110(a)(2)(E) and 126 of the Clean Air Act; and
- Reduce sulfur oxide emissions in the near term, with further controls identified as additional research warrants.

Long range transport of pollutants, including precursors of photochemical oxidants and acid deposition, cannot be adequately addressed by state and local governments under the existing structure of the Clean Air Act. ALAPCO recommends that the Federal role be strengthened through amendments to Sections 110(a)(2)(E) and 126 of the Act to insure equity. Moreover, since the ultimate responsibility for adopting and enforcing emission limits still rests with state and local agencies, it is necessary that resources be made available to assist in this effort.

With regard to acid deposition, ALAPCO recommends that actual reductions in sulfur oxide emissions be achieved in the near term, with further controls identified when found to be warranted by additional research.

X. HAZARDOUS POLLUTANTS

Recommendations:

- Increase funding; and
- Accelerate standard setting.

Hazardous pollutants are a growing problem in our society, yet federal efforts to promulgate standards have not been sufficient to address this air pollution problem. ALAPCO supports increased funding and

legislative authority to place research and standard promulgation on an accelerated schedule.

XI. TRAINING

Recommendation:

- Retain federal training programs in which state and local agencies may freely participate.

ALAPCO is convinced that an effective training program for air pollution control personnel can best be accomplished through a national program conducted in regional areas. EPA must carry on a training program for its own personnel. These efforts need not be duplicated through separate state programs. ALAPCO recommends retention of federal training programs in which state and local programs may freely participate.

STATEMENT FOR THE RECORD

ON

S 768 - CLEAN AIR ACT AMENDMENTS OF 1983

ON BEHALF OF THE

AMERICAN PAPER INSTITUTE

AND THE

NATIONAL FOREST PRODUCTS ASSOCIATION

1619 MASSACHUSETTS AVENUE, N.W.

WASHINGTON, D.C.

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

UNITED STATES SENATE

FEBRUARY 24, 1984

I. Introduction

The following statement for the record on S 768, the Clean Air Act Amendments of 1983, is provided on behalf of the American Paper Institute and the National Forest Products Association (API/NFPA). API/NFPA are national trade associations representing over 2,000 member companies which own and manage over 70 million acres of forest lands in the United States and manufacture approximately 90 percent of the nation's pulp, paper and solid wood products.

As part of our continuing evaluation of laws affecting the forest industry, API/NFPA have completed their most recent review of the Clean Air Act and proposed amendments, including S 768. As in the past, we fully support the goals of the Act. A decade of experience, during which the industry made capital expenditures in excess of three billion dollars to meet its requirements, has provided us with valuable insight into many of the Act's provisions. Our hope is that various requirements of the Clean Air Act can be improved to produce positive environmental effects without imposing unjustifiable costs, uncertainties and complexities. To the extent the existing Act or proposed amendments do not meet this objective, the industry must seek modifications. The following comments are submitted with that in mind.

II. Analysis of S 768

A. Section 120 - Interstate Transport and Acid Rain Precursors

The inclusion in S 768 of a provision not in the current law - namely the program to control acid rain - is of particular concern to us.

The forest products industry depends on an abundant supply of healthy and productive trees for its raw material. In 1982, the industry converted this renewable resource into finished products valued at $120 billion. We, therefore, view with much concern reports of damage to forests that (a) could be attributed to emissions of oxides of sulfur and nitrogen and (b) could be stopped by reductions in those emissions. However, the lack of scientific consensus on possible damage to forests and other ecosystems, coupled with aberrations on what should have been the expected trends in deposition and effects, precludes the forest industry from supporting additional emission control proposals.

The industry has utilized the services of the National Council of the Paper Industry for Air and Stream Improvement (NCASI) to reach its conclusions on the effects of acidic deposition on forest productivity. NCASI has completed two reviews of the literature and ongoing research projects. The latter of these reviewed 179 literature references and 65 related research projects. The NCASI report, which is enclosed for the record, concludes,

> Probably the most important finding of this current review, and one which does not differ from observations made two years ago, is that as yet the evidence for damaging effects of acidic deposition on forest productivity has not been conclusively documented under field conditions.[1]

A recent article by S. B. McLaughlin, D. C. West, and T. J. Blasing of the Oak Ridge National Laboratory supports this view. They state, "At present we have no proof that the most recently recognized component of present-day pollution regimes, acid precipitation, is adversely affecting forest productivity."[2]

In addition, trends in acidic deposition and observed ecosystem effects raise important questions. The most compelling of these is the apparent role natural processes play in acidification. As related in testimony before the Committee by Dr. Ely Gonick, Senior Vice President - Technology for International Paper Company on February 10,

1. "Acidic Deposition and its Effects on Forest Productivity - A Review of the Present State of Knowledge, Research Activities, and Information Needs - Second Progress Report," NCASI Technical Bulletin No. 392, January 1983, pg. 3.

2. "Measuring effects for air pollution stress on forest productivity: Perspectives, problems, and approaches," S. B. McLaughlin, D. C. West, and T. J. Blasing, Oak Ridge National Laboratory. Reprinted in Tappi Journal, January, 1984, Vol. 67, No. 1, pg. 79.

"Many scientific papers report that acidification is largely the result of natural processes of decomposition of litter from the forest, that conifers are particularly strong acid formers and that as much as 90 percent of the acid in run-off from coniferous areas is natural in origin." To formulate these statistics, Dr. Gonick cited studies from such disparate areas as the West Coast and the State of Maine.

A publication from the United States Geological Survey also conflicts with the claimed link between SO_2 emissions and pH levels of receiving water basins. In records collected over a 10-15 year period from the Hydrologic Bench-Mark Network, USGA found that stream basin pH followed no pattern with respect to increases and decreases in emissions of SO_2.[3]

Furthermore, even if natural sources played no role in acidification and there was an apparent linear relationship between atmospheric SO_2 levels and stream pH, the National Academy of Sciences and others have found it impossible to decide which sources of emissions are responsible for the SO_2 loadings in particular receptor areas.[4] These findings lead the forest products industry to have

3. "An Evaluation of Trends in the Activity of Precipitation and the Related Acidification of Surface Waters in North America," John T. Turk, U.S. Geological Survey Water-Supply Paper 2249, pg. 9

4. "Acid Deposition: Atmospheric Processes in Eastern North America - A Review of Current Scientific Understanding," National Academy Press, 1983, Summary, pg. 5.

serious reservations about the environmental benefit which would result from acid rain control proposals such as in S 768. Because of these reservations, we strongly support the research program recently outlined by Environmental Protection Agency Administrator William Ruckelshaus before the Committee. The program is well-conceived and is directed at finding the answers to questions that should be resolved before any additional plan on acid rain can be developed.

Notwithstanding our general reservations over the potential for environmental improvements under S 768, we also have particular concerns with the following specific provisions.

First, the bill prohibits any increase in nitrogen oxide emissions from existing sources in the 31-state control region unless offsets are obtained. However, we are lacking strong scientific evidence on the role played by NO_x emissions in the acid rain phenomenon; there is no known effective conventional method for controlling existing sources of nitrogen oxide emissions; and offsets are not generally available. As a result, the bill likely would prevent any further conversions of boilers from gas and oil to coal, as well as preclude conversions to allow the sound practice of burning wood wastes alone or in combination with coal.

Second, the bill requires that all new emissions of sulfur dioxide in the control region be offset by reductions of emissions from existing sources. This provision would have a profoundly adverse

effect on the full utilization of existing plant capacity and new industrial growth. This problem would be particularly acute in the South, where the relatively new industrial base and the historic dependence on gas and oil results in fewer opportunities for emissions offsets.

The forest products industry offers a case in point. Most of our recent and projected growth is represented by new sources of emissions in the South. Since 1980 (the base year for emissions off-setting in S 768), the paper industry has made over $2 billion in capital investments in the South. Each of these facilities would be forced to either (a) seek retroactive offsets, (b) retrofit new facilities which already meet stringent New Source Performance Standards, or (c) close down. The problem is intensified as additional new sources attempt to find offsets from a dwindling, if not non-existent, supply.

Third, the bill requires the greatest emissions reductions in five midwestern states which are currently hardest hit by economic conditions. Thus, it would place a heavy and inequitable economic burden on utility customers in those states whose economies are least able to absorb these costs.

B. Percentage Reduction

S 768 does not include a number of needed changes to existing law. By far the most serious omission is the failure to eliminate the percentage reduction requirement for industrial boilers. Section

111(a) of the Clean Air Act requires that as New Source Performance Standards (NSPS) are revised, coal users must reduce emissions from new boilers by a certain percentage regardless of the cleanliness of the fuel that is burned. This provision was enacted in 1977 to protect high sulfur coal producers serving electric utility companies who were expected to shift from high sulfur coal to lower sulfur fuels as a means of complying with the Clean Air Act. While the Environmental Parotection Agency has not yet decided the matter, the Agency may apply this requirement to industrial boilers as well when that NSPS is revised, possibly within the next several months.

The application of this requirement to industrial boilers seems to be particularly ill-advised because most industrial boiler operators have already made the fuel use adjustments needed to comply with the current provisions of the Clean Air Act, and because coal produced for this use accounts for only ten percent of the total coal market.

In addition, mandatory installation of flue gas desulfurization (FGD) systems on industrial-sized boilers appears to be extraordinarily cost-ineffective. These costs are borne out by a study recently published by NCASI (the National Council of the Paper Industry for Air and Stream Improvement). The study was based upon data supplied by the consulting firm of Burns and McDonnell and utilized actual installed cost or detailed engineering estimates of FGD (scrubber) systems. The study, which is attached for the record, reached the following conclusions:

- Capital cost for scrubbers at industrial-sized (0-1,100 million Btu) boilers are significantly greater per unit of energy input than for utility-sized boilers. This difference becomes more pronounced the smaller the boiler.

- Actual capital cost of scrubber installation on industrial-sized boilers were two to three times higher than had been assumed in contractor work (Radian) extensively used by the Environmental Protection Agency in its cost estimate on SO_2 removal.

- In absolute as well as relative terms, the capital cost of installing scrubbers on industrial-sized (0-1,100 million Btu) boilers is more costly than had been envisioned.

Because virtually the same environmental gain could be achieved simply by burning cleaner, low sulfur fuels alone or in combination with wood, the forest products industry strongly supports exemption of industrial boilers from the percentage reduction requirements of the Clean Air Act. In the 97th Congress the House Energy and Commerce Committee, strongly divided on most issues, approved such a provision by voice vote. The language adopted is provided for the Committee's review. It clarifies what we believe to be Congress' original intention on this matter.

REPEAL OF "PERCENTAGE REDUCTION" FOR INDUSTRIAL BOILERS (TAKEN FROM H.R. 5252 AS MODIFIED BY THE SWIFT AMENDMENT)

SEC. 103 (a) (1). Section 111 (a) (1) of the Clean Air Act is amended by inserting before "the percentage reduction achievable" the following: "(except as provided in paragraph (9)."

(2) Section 111 (a) of the Clean Air Act is amended by adding the following new paragraph at the end thereof:

"(9) The provisions of subparagraph (A) (ii) of paragraph (1) respecting percentage reduction shall apply only to those categories of stationary sources to which such provisions apply under regulations in effect on December 31, 1981, except that such provisions (and any regulations adopted by the Administrator under such provisions) shall not require a percentage reduction in sulfur dioxide emissions for any cogeneration facility owned or operated by any person if --

"(A) the construction of electric power generation equipment for such facility is commenced after the date of the enactment of the Clean Air Act Reauthorization Amendments of 1982, and

"(b) the maximum potential electric power output of such facility, together with all other cogeneration facilities owned or operated by the same person and located on the same or adjacent or contiguous property, does not exceed 125 megawatts.

As used in this paragraph, the term 'cogeneration facility' has the meaning provided by section 3(18) of the Federal Power Act. The terms 'technological process' and 'technological system' as used in this section shall not be construed to require a percentage reduction in emissions from those facilities which are not required to achieve such a percentage reduction by reason of the preceding provisions of this paragraph."

(b) The regulations of the Administrator under subpart Da of part 60 of subchapter C of chapter 1 of title 40 of the Code of Federal Regulations shall, on the date of the enactment of this Act, cease to apply to the extent such regulations are inconsistent with the amendments made by subsection (a). The Administrator shall, promptly after the date of the enactment of this Act, amend such regulations to reflect the amendments made by subsection (a).

C. Prevention of Significant Deterioration (PSD)

The 1977 Act added a two-part program to preserve air quality in clean air areas of the country. First, best available control technology (BACT) is required for all new facilities in a PSD area. Second, new facilities must show they will not exceed certain increments of air degradation, even with the installation of BACT.

The goals of this program are laudable, and particularly in areas of the country of unique national value, i.e., Class I areas, the two-part program appears to provide an additional safety net for emissions growth over and above BACT. For Class II areas, however, the increment system has resulted in little, if any, additional environmental protection. As the National Commission on Air Quality stated, "Commission studies suggest that a program requiring BACT determinations alone (without the Class II and III increment system) would result in emissions growth equivalent to that obtained through the current program with increments . . ."[5] In addition, the significant complexities, costs and delays associated with the preconstruction demonstration of compliance provide a further indictment of the increment system, particularly as it applies to Class II areas.

By eliminating the cumulative tracking of short-term increments in Class II areas and mandatory preconstruction monitoring, S 768

5. To Breathe Clean Air, Report of the National Commission on Air Quality, March 1981, pg. 3.5-48.

provides needed relief. However, the forest products industry is concerned that the only mechanism whereby additional Class II increments - particularly those in non-mandatory Class II areas - can be eliminated is via a very complex 20-year plan to be prepared by the states within 18 months of enactment. As outlined in Section 110 of the bill, the plan requirements are far too complex to allow completion within the time allowed. In addition, if the NCAQ is correct and Class II increments have little if any bearing on real-world air quality, the plan may be a needless, resource-consuming effort.

The bill makes two additional definition/procedural changes that are of great concern to the forest products industry. First, S 768 provides, in effect, a new "best of nation" definition for Best Available Control Technology (BACT) for major facilities in those areas that have "opted out" of the increment system. Such a change would only contribute to greater delays and complexities in the permit negotiation process. For example, in many instances specific control technology is required because of unusual terrain or existing local air quality. The permitting authority under Section 110 (e)(1)(C) of the bill could allow less stringent control technology only if highly individual circumstances such as these were discounted as inappropriate benchmarks for the "best of nation" technology determination. If such a time-consuming regimen were not followed, unduly expensive and environmentally inappropriate BACT determinations will be made. This is a particularly troublesome prospect to the forest products industry, where it is generally

accepted that even the New Source Performance Standard (NSPS) for our source category is very stringent. Taking that NSPS and stretching control requirements even beyond current BACT determinations appears to be unnecessarily burdensome.

Second, S 768 makes a troublesome change in the PSD requirements for redesignating areas as Class I. Current law provides that in addition to conducting public hearings, an analysis must be completed on the "health, environmental, economic, social, and energy effects of the proposed redesignation," before this upgrading of areas can occur. In an effort to streamline the redesignation process, the bill eliminates this latter provision and with it any requirement that the states must carefully examine the far-reaching consequences of redesignation. Because a Class I designation carries with it major prohibitions on future land use, it seems unwise to allow such decisions to be made without adequate information from all perspectives. The industry supports the retention of provisions of current law contained in Section 164 (b)(1)(A).

Finally, the Clean Air Act Amendments of 1977 included a program under PSD to protect visibility in our nation's parks and wilderness areas. The forest industry supports this goal. Unfortunately, the program's scope was dramatically enlarged when EPA proposed to protect visibility not only within these areas, but also in distant outside regions that can be seen from the protected areas. Such a program could choke economic development on many thousands of square miles of land far from any park or wilderness area. Although S 768 provides

for desirable input from the states on the economic as well as environmental impact of protecting an integral vista, it does explicitly include this "integral vista" concept as part of the proposed amendments. Before implementation, additional evaluation of the integral vista program is now underway at EPA. The forest industry favors allowing this evaluation to proceed prior to any legislative action.

D. Section 114 - Nonattainment

The existing Clean Air Act mandates different emissions control technologies between areas not meeting federal air quality standards (nonattainment) and those which do (PSD). The Lowest Achievable Emissions Rate (LAER) requirement for nonattainment areas has been the object of scrutiny for virtually all studies of the Clean Air Act. There is consensus among these studies that LAER determinations are complex and time consuming and not consistently applied by the states. For these, as well as other, reasons, authorities such as the National Commission on Air Quality recommended that LAER should be repealed and replaced by identical requirements for all new sources in all areas.[6]

While S 768 does establish uniform control technology requirements for all areas, it complicates the process by adopting the new "best

6. Ibid, pg. 2.2-11

of nation" BACT requirements. This provision only serves to further complicate the permitting process for both the applicant and the permitting authority. The forest industry believes application of the BACT requirement for all new sources, regardless of location, will improve the efficiency of the Act. Further, it will lead to improved air quality by reducing the complexities for construction of new facilities - many of which replace older, less-environmentally sound ones.

E. Judicial Review/Award of Fees

The forest industry welcomes the changes that would be made by Sections 301 (Judicial Review) and 302 (Award of Fees) of S 768. The Judicial Review provisions will result in a more appropriate distribution of cases throughout the United States Court of Appeals system. In addition, the Section provides adequate contraints against "forum shopping" and eliminates any benefits from engaging in the unseemly, and often inequitable, "race to the courthouse."

S 768 also eliminates the potential for further flagrant abuse of provisions of the Clean Air Act which provide for the awarding of litigation costs (including reasonable attorney and expert witness fees). By limiting possible awards to parties "prevailing or substantially prevailing," the bill further guards against the possibility of frivolous suits and eliminates the unfair situation where the prevailing party was forced to pay the losing party's costs.

III. Conclusions

Although S 768 does provide some favorable changes in the Clean Air Act, the bill generally fails to untangle many of its complexities. In addition, by overlooking needed changes in the percentage reduction requirements for industrial boilers, the bill has missed a significant opportunity to dramatically cut the costs of environmental improvement. Therefore, in keeping with our stated objective "to produce positive environmental effects without imposing unjustifiable costs, uncertainties and complexities," the American Paper Institute and the National Forest Products Association will continue to seek the modifications to the Clean Air Act and S 768 outlined in this statement.

STATEMENT OF HAROLD T. HALFPENNY

GENERAL COUNSEL, AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION

TO

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

RELATING TO THE CLEAN AIR ACT

Mr. Chairman, members of the Committee:

My name is Harold T. Halfpenny of the firm of Halfpenny, Hahn & Roche. My statement is submitted to you in my capacity as General Counsel for the Automotive Service Industry Association (ASIA).

The Automotive Service Industry Association (ASIA) is the automotive world's largest and most comprehensive organization, with its membership encompassing more than 8,500 independent automotive wholesalers, warehouse distributors, heavy-duty parts and equipment distributors, automotive electric service distributors, manufacturers' representatives, manufacturers and remanufacturers of automotive replacement parts, tools, equipment, chemicals, paint, refinishing materials, supplies and accessories.

On behalf of the Association I express appreciation for the opportunity to submit this statement reflecting the views of the Association membership with respect to the economic impact of certain sections of the Clean Air Act and the regulatory actions

of the Environmental Protection Agency (EPA) in its implementation of those sections of the Act.

Mr. Chairman, you and the members of the Committee are to be commended for your unrelenting and tireless efforts to protect and to preserve our environment. The independent automotive aftermarket also places a high priority on such protection. Over the years, the independent aftermarket has made a significant contribution to protection and preservation of the environment by providing a convenient, efficient and low cost opportunity to make the necessary repairs and perform the necessary maintenance on the millions of motor vehicles traveling the nation's highways. The consumer has overwhelmingly chosen to use the independent aftermarket where a free choice to do so has presented itself. The result is that our air quality is better than it would be if they did not so freely exercise their choice for that efficient and convenient service.

Getting the right parts to the right person at the right time and at the right place at a competitive and affordable price is the mission of the independent aftermarket. It is a mission that serves the consumer very well. Competition in the marketplace breeds efficiency and that efficiency allows the industry to provide the double convenience of affordable cost and immediate service.

Now however, the consumer and this vast independent industry face a serious crisis. The competitive structure of the industry and therefore the highly efficient and affordable service it provides is under attack. The point of attack originates from

where one might least expect it. It is one that is self-defeating but nevertheless highly destructive. We are speaking of the monopolistic 5 year/50,000 miles performance warranty interpreted by the EPA to cover a wide range of parts, a warranty that is being accepted by the vehicle manufacturers as a fact of life that imposes few additional economic burdens on them but as one which opens up new vistas of a government mandated and approved monopoly in an industry that has heretofore successfully served the public so well primarily because of competition and the absence of any such monopoly.

The issue raised by the 5 years/50,000 mile performance warranty is not environmental -- it is an economic issue -- it is a question of monopoly as opposed to free enterprise. It is an issue that springs from the language of the Clean Air Act and the EPA interpretation of that language.

It is not the purpose of this statement to address all aspects of the Clean Air Act but rather it is intended to focus these remarks on the warranty provisions in the Clean Air Act and the devastating economic impact on the independent aftermarket of the EPA regulations implementing the warranty provisions.

Prior to 1977 the performance warranty provisions of the Clean Air Act required the vehicle manufacturer to warrant the emission control system for a period of 5 years or 50,000 miles. Urged on by an independent automotive aftermarket that saw the monopolistic threat inherent in this mandated warranty, Congress enacted the Clean Air Act Amendments of 1977 because it believed that a broad coverage, 5 year/50,000 mile mandated warranty,

would result in anticompetitive effects harmful to small business, the free market and consumers.

In enacting the 1977 amendments, Congress attempted to strike a careful balance between the environmental beneftis and the anticompetitive drawbacks of a mandated warranty. While recognizing that any mandated warranty distorts the marketplace and deprives the consumr of freedom of choice in selection of parts and services, the independent aftermarket nevertheless was prepared to live with such a reduced warranty since it more closely conformed to the actual economic realities of the marketplace exercised on a voluntary basis by the industry.

It is submitted that such a mandated warranty was not and is not needed in order to protect the environment. The requirements for protection of the environment are met by maintaining in the Act the provisions for durability certification through mandatory recall provisions. Thus, the mandate of a warranty takes on the character of an imposition of economic control that is not related to or necessary for the attainment of desired clean air objectives.

The EPA resisted the changes in the warranty provisions of the Clean Air Act when such changes were considered and passed by Congress and continues to this day to resist the effort by Congress to reduce anticompetitiveness in this industry.

Utilizing loopholes in the Act, the EPA has effectively overridden the intent of Congress and has put into place a regulatory scheme that substantially deprives the independent aftermarket of access to the parts and service market for

vehicles less than 5 years old and substantially deprives the consumer of freedom of choice in selection of parts and services for that same period.

The existence of a warranty has historically forced the vehicle owner back to the vehicle dealer, not only for warranty work but also for routine maintenance work, such as spark plug replacement. It is only human nature to refuse to risk the loss of something of potential nature that has been paid for in the original price of the vehicle.

Studies conducted in the 1960's, during the time vehicles manufacturers initiated voluntary 5 year/50,000 mile warranties showed a significant drop in the independent aftermarket share of the replacement market even for those parts and services that were not specifically covered by the extended warranties.

One can only conclude that the EPA does not agree with Congress and that the agency either through a lack of understanding of how the industry operates or through an obstinate refusal to recognize the effect of legalistic warranty language on the consumer has embarked on a course of using the present language of the Clean Air Act as a vehicle for accomplishing its own particular economic objectives. It is submitted that the EPA is mandated by law to pursue environmental rather than economic objectives and that all attempts by EPA to override the will of Congress through dubious interpretations and utilization of loopholes must be reversed by legislative action.

Nowhere is the intention of EPA to circumvent Congressional intent more clear than is its attempt to completely change the performance warranty concept.

In 1980, by regulatory fiat, EPA significantly expanded the range of parts subject to the 5 year or 50,000 mile warranty beyond the intent of Congress. The expansion was based on the construction that all parts which help enable emissions systems to function properly fall under the category of those whose sole or primary purpose is to reduce vehicle emissions and thus subject to the longer warranty.

The expansion of the list of parts covered by the longer warranty has a negative impact on competition in the aftermarket. This reduction in competition hurts, rather than helps the consumers. The Federal Government, through the actions of the EPA, is in effect tilting business away from small, private auto parts operations and toward dealer service and parts departments.

There is no rational need for a mandated extended warranty on a broad based number of parts. Congress realized this in 1977 and amended the law. EPA refuses to accept this premise and has deliberately and in a deceptive manner rolled back the law to pre-1977 provisions. It cannot ever be said that it is in the best interests of this country for an unelected regulatory agency to wield power that transcends that of an elected body - - the Congress.

But the EPA remains steadfast in its determined effort to deprive the consumer of freedom of choice for parts and services and to impose a mandated monopoly to the detriment of the vast independent automotive aftermarket.

If the intent of the EPA is to force a continuing relationship between the vehicle owner and the vehicle dealer for

5 years or 50,000 miles, then its actions accomplish that task very well. Congress did not intend this relationship, seeing in it the seeds of an anti-competitive situation that impacts severely on the entire economy. But, is EPA really doing this to protect the environment or is this an attempt by EPA to force an economic warranty on the auto industry regardless of the consequences to the consumer?

What must be understood is that the economic harm to the aftermarket occurs when the vehicle is sold with the warranty document in the glove box, not when the warranty obligation is fulfilled. The harm results because the warranty in the glove box forces the vehicle owner to the dealership for fear of losing any rights he may have under the warranty.

The question of an environmental need (as opposed to an economic objective) for a warranty is not addressed by the warranty regulations. In its own studies, the EPA has found that most vehicles failing an emissions test do so because of improper maintenance, removal of components by the owner or use of leaded gasoline. In the vast majority of cases, therefore, the system does not come under the terms of the warranty. What then can be accomplished by imposition of a requirement for a warranty offering that does so little for the environment but is so economically devastating to the aftermarket and to the consuming public?

The simple logic is that the moment the EPA adds anything to the warranty over and above the few new devices added specifically for emission control, the complexity and confusion

with regard to liability and responsibility grows geometrically. With each additional covered component comes rules and regulations as to when and under what circumstances the vehicle manufacturer is responsible. It is totally unreasonable to expect the motorist to decipher the rules and his only logical recourse is to take the vehicle to the vehicle dealer for all work, warranty related or otherwise. Experience has shown this to be a fact in the past, and you can be assured it will be a fact in the present circumstances. Vehicle owners are not going to wait to flunk a test --- they are told when they buy the vehicle they may have warranty rights --- they do not want to lose those rights --- the sure way to avoid losing them is to stay with the vehicle dealer for the full length of the warranty.

The independent aftermarket has exhausted its potential remedies in its own relentless and untiring effort to lift the threat of monopoly away from the consumer's freedom of choice and to protect and to preserve the competitive structure in the aftermarket.

This association has taken its case before the designated court that hears matters relating to governmental regulations. In seeking review of the monopolistic EPA regulations, this association pointed out to the court the inconsistency of Clean Air Act language and the EPA regulatory language. In objecting to the extensive list of parts that EPA published in its regulations as those it believed to be covered by the long-length warranty, this association presented a report on a technical study conducted by experts from within the industry who analyzed

the specific parts proferred by EPA as warranted parts and on the basis of the technical, historical usage, and particular performance characteristics of those parts, set forth its conclusions as to whether such parts belonged in the extended warranty category or whether such parts were by any reading of the language of the Clean Air Act not to be considered as subject to extended warranty. A copy of that report is appended to this statement for your further information.

This report is unique. It represents the only comprehensive material now in existence for use in determining the precise coverage of parts under extended warranty. The EPA has not offered a comparable report to justify its inclusion of a multitude of parts in its so-called advisory list of warranted parts. Nevertheless, the court said that EPA had authority to compile such a list and avoided direct confrontation with the issue of whether the EPA list of parts was correct or not by stating that the list was not a list at all, but rather an unofficial statement of what EPA thought should be on the list and one which the individual vehicle manufacturers could rely on as "advisory only". Obviously, the courts do not wish to enter this highly technical area of determining what specific parts do or do not fall under the extended warranty.

It is left to those who would most benefit from a monopoly to determine how that monopoly may best be implemented. Lost in this economic shuffle are any environmental concerns since as experience as shown it is the independent aftermarket and not the vehicle manufacturers who provide the parts and services

necessary to keep a vehicle in efficient operating order after initial sale and expiration of normal commercial warranties and it is exactly the provision of such parts and services at affordable prices, at times and places convenient to the consumer and in a highly efficient manner that is the true protector of the environment from any potential harmful effects of motor vehicle operation after the first two years of life of the vehicle.

Mr. Chairman, the issue is economic, not environmental. It is monopoly over free enterprise. The issue must be decided based upon principles of competition and in light of our historical national opposition to monopoly. Our industry fought hard for the 1977 amendments to the Clean Air Act. Congress believed in us and we in it. Upon enactment of the amendments, it was assumed by all that competition had been preserved and the environment fully protected by the limitation of the performance warranty after 2 years/24,000 to those limited parts that are placed on a vehicle for the sole or primary purpose of controlling emissions. Under current EPA interpretations, this is not the case.

It is submitted that now is the time to evaluate the consequences of a mandated warranty to the industry and to the consumer. A mandated warranty can and will mean the end of a competitive independent aftermarket. Consumers will lose their freedom of choice for parts and services. Clean air will not be enhanced. A depressed aftermarket industry and unemployment will be the ultimate result. In view of other provisions in the

Clean Air Act, which have been demonstrated to work effectively in cleaning up the environment, there is no need nor is it economically desireable to "seal the hood" of the vehicle and prevent the vehicle owner from obtaining parts and services when and where he needs them and at competitive prices determined by free market place conditions.

This association respectfully requests that the economic issue be considered as it should be, as one totally separate and totally distinct from, any environmental issue, which has been seen, does not truly exist here; except as to the future detrimental effect of a depressed independent aftermarket which will be foreclosed from providing the parts and services that only it can provide efficiently, affordably and conveniently, and which is necessary for the protection of the environment.

Respectfully submitted,

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General Counsel for the
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Association

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